UNIVERSITY OF PENNSYLVANIA

AGENTS AND CONTRACTS IN EXPORT TRADE

A STUDY OF FOREIGN AGENTS AND FOREIGN AGENCY CONTRACTS IN THE EXPORT TRADE OF AMERICAN MANUFACTURERS

RALPH F. BREYER

A THESIS

IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

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PREFACE

This study has to do with "Foreign Agents and Foreign Agency Contracts in the Export Trade of American Manufacturers." The agents referred to here are selling agents. Their major activities relate directly to the sale, or lease, and distribution of commodities. In this sense they are to be distinguished from legal, financial, forwarding, insurance, or warehouse agents used in the export trade. The special functions performed by the latter assist in getting the goods to the consumer but they have fundamentally nothing to do with effecting sales. The advertising agent is also to be distinguished from the selling agent. The former is a specialist in the science of mass sales appeal through the printed word or symbol. The selling agent, on the other hand, while never a specialist in advertising, may handle general advertising. However, his major function is to effect sales through personal solicitation and by individual advertising, such as sales letters, and at the same time carry the burden of innumerable supplemental distribution duties. The term foreign agents denotes selling agents who reside or have headquarters outside continental United States.

By foreign agency contracts is meant here the agreements with foreign agents containing the grant and the terms of the representation.

The study of foreign agents and foreign agency contracts is limited to the export trade of American manufacturers. That is to say, it covers only foreign agents and agency agreements in so far as they are used by *manufacturers* engaged in direct exporting. This treatise has nothing to do with their use in the import trade, nor with their use in export trade by export houses. Distributing companies owned by American manufacturers and producers are included in the term "American manufacturer."

As in domestic trade, so in the *direct* export trade it is necessary for the manufacturer to create an efficient sales organization. This involves not only organization at home, but also abroad. Only the larger manufacturers, with a very substantial volume of export sales, are able to place branch houses in foreing

countries. The great majority of manufacturers of the United States sell but a moderate amount of goods abroad, their volume of export sales seldom, if ever, warranting the establishment of branch houses in their foreign markets. They must depend in large part upon some type of foreign agent to supply the necessary selling organization overseas. Even the large manufacturing exporters find that in certain of their foreign markets the volume of sales does not permit the use of branch houses. In such cases they also must rely largely upon foreign agents. Thus the problem of foreign agents and foreign agency contracts becomes one of the outstanding problems of direct exporting.

The treatise approaches the problem from the viewpoint of the manufacturer about to engage in direct exporting. The first chapter presents a classification of agents. This is followed by chapters dealing with the desirability of using foreign agents, the selection of such agents, selling the representation to the prospective agent, and the general problems of foreign agency contracts. The next five chapters, which present an analysis of foreign agency contracts, grouped by commodities, show the nature of agreements now being used by American manufacturers. The effect of varying market conditions upon the terms of the agency contract is treated in the following chapter. The next to the last chapter deals with co-operation with the foreign agent. A final chapter presents a brief summary of the field covered.

In treating these subjects the writer is keenly aware of the fact that procedure and treatment of foreign agency problems vary with the peculiar circumstances of each and every foreign agency relationship. It is impossible to take cognizance of such infinite variations in a treatise of this nature. All that can be done here is to present the fundamentals of such procedure and treatment. Their application and adaptation can well be left to the business acumen of the manufacturing exporter.

The writer wishes to acknowledge his indebtedness to many export managers throughout the United States, whose unfailing assistance made this study possible.

Ralph F. Breyer.

University of Pennsylvania

June, 1925.

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I

TYPES OF AGENTS IN FOREIGN TRADE

Definition of the Term "Agent"

Some confusion and doubt regarding the term "agent" have arisen recently in export circles. This has been due to the fact that the word has been used in such a broad, general sense as to include almost any form of sales representative, which has brought it into conflict with the strictly legal meaning of the term.[1] Certain exporters would have the term discarded altogether, but they fail to produce in its place a more satisfactory one.[2] The problem of terminology can be clarified by breaking it down into its two constituent parts. First, there is the question of obtaining a term which adequately covers the collective concept of a body of selling representatives presenting all shades of variations of relationships between each one and his exporter. Secondly, there is the problem of the proper use of the term "agency," or any other term applied in the above sense, with respect to the legal implications which may follow.

The use of the term "agent" to denote collectively the whole body of selling representatives abroad is usually followed by American exporters. Furthermore, such a collective concept is valuable in that there are problems which can be treated as one for selling representatives taken as a whole. Since it is commonly used in this manner, and represents a definite and useful concept, there seems to be no reason to abandon the term in this generic sense. Nevertheless, it is certainly true that the scientific discussion of agency problems will often require a more specific description of the particular type of agent in mind. This should

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[1] See A. J. Wolfe, "*Agency Contracts in Foreign Trade*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, Feb. 6, 1922; William G. Marvin, "*Foreign Agency Relations*," *Export Trade and Finance*, June 2, 1923.

[2] See Editorial "*A Dangerous Word*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, July 14, 1924.

be facilitated by the classification of agents in the latter part of this chapter.

Quite distinct from the above question is the difficulty which arises in using the term "agent" or "agency" in one's practical relationships with the selling representative. Should the exporter designate the representative as his agent in the foreign agency contract, or in his correspondence with the agent, or should he permit the representative to advertise himself as the agent of the exporter, the exporter may place himself in an undesirable and uncontemplated legal position. In such case the law may vest the representative with the complete powers of a legal agent and the exporter will be compelled to accept all the liabilities of a principal under the agency law of the country in point. As stated by Mr. A. J. Wolf in an editorial in *Commerce Reports:* "This danger lurks in the possibility of abuse of the implied relationship by an untrustworthy agent, in the opening for claims by innocent third parties against the supposed principals, and finally in the liability of the American firm to taxation where the presence of an agent is construed as the transaction of business by the principal within the agent's country."[3] It would appear desirable here, then, to use the term "agent" only when a true agency relationship, as contemplated by the law of the country, exists. Such terms as "Distributor," "Dealer," "Factor" or "Licensee" might be substituted for the word "agent," although it must be remembered that they are more or less unfamiliar in certain foreign countries, and can not be as effectively employed by the representative in advertising his house to his trade. It has been suggested that in such cases the representative be permitted to advertise the fact that he has the "sole sale" of the goods. In any case, however, the use of such substitute terms will not prevent the courts from declaring the representative the legal agent of the exporter where in fact such a relationship actually exists.

It is apparent then that the term "agent" has both a legal sense and a selling sense. Just when a particular selling repre-

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[3] See Editorial "*When Is an 'Agent' Not an Agent?*" *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, Oct. 10, 1924.

sentative is an agent in the legal sense of the term depends upon the provisions of the agency law of the country whose jurisdiction is involved. These vary as between countries. Furthermore, the rights and liabilities of principal, agent, and third parties will likewise vary with different jurisdictions.

The use of the "agency" method in selling goods abroad, however, does not necessarily imply all of the rights, liabilities or duties devolving upon the parties concerned as contemplated under agency law. Many agency arrangements of American exporters do not grant the agent the power to bind the principal when dealing with third parties such as the agent, as a duly constituted legal agent, would possess, nor do they often contemplate the full liability of principal to third parties holding under a legal agency relationship. The interpretation by the courts of the nature of the agreement between the exporter and the agent may, of course, be such as to read these conditions into the relationship. They are, however, certainly not contemplated by exporters in creating the agency. It is also usually true that neither exporter nor agent have in mind a system of issuing orders by the exporter to the agent which the latter is bound to execute verbatim. While certain elements of the agreement might require this—such as retail price lists issued by the manufacturer and to be followed by the agent—nevertheless the agency arrangement is a much broader and looser relationship allowing more play to individual judgment and initiative on the part of the agent. This is particularly true where the agent purchases the goods outright from the manufacturer.

There is then a distinct selling sense in which the term "agency" is used, quite different from the ordinary legal denotation of the term. What the American exporters have in mind is merely a selling arrangement with an individual or concern whereby the latter will provide, in co-operation with the exporter, an effective means of exploiting the foreign market. The conditions under which transactions will be handled—price quotations, terms of sale, commissions, etc.—are, to be sure, definitely settled. And, while it is expressly understood that the agent will use every effort to develop the market, yet this must be, and is, left in large part to the latter's judgment.

It is difficult to give a precise and concise definition of an agent in the selling sense. Perhaps, in consideration of the primary function of such a person, and in deference to the customary usage of the term in export circles—an agent might best be defined in a somewhat general way as one who is appointed to promote directly the sale of the exporter's product in some defined territory where he is granted certain exclusive selling rights.[4] A foreign agent is an agent whose residence or main office is located in a foreign country or an outlying possession of the United States. This is the sense in which the term "foreign agent" is used for the purpose of this study.

Classification of Agents[5]

As stated above, it is often necessary to treat of agents having certain distinct peculiarities. It is desirable then to classify them according to types based upon certain major characteristics of the agent. On this basis agents might be grouped according to the residence of the agent, his nationality, the trade group to which he belongs, the fixity of the agent, his type of business organization, the immediate sales destination of the goods, his selling rights, the lines he handles, the carrying of stocks, credit responsibility of the agent, the directness of the relationship with the exporter, and the branch of foreign trade in which he is interested.

On the basis of residence, agents are often grouped as domestic and foreign. Domestic agents engaged in foreign trade reside or have their headquarters in continental United States. Most of these are located in New York and other important sea-ports of the United States, while some have their main offices at important commercial centers of the interior. Foreign agents have their residence or headquarters outside continental United States. This group may in turn be divided into three sub-groups, namely: those who reside within the country for which the

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[4] For other definitions see *Export Merchandising*, Walter F. Wyman, Pp. 319-320; A. J. Wolfe, "*The Legal Aspects of Foreign Agency Agreements*," *Export Trade*, Jan. 28, 1922; M. H. Esser "*Agency Agreements in Foreign Trade*," *Export Trade and Finance*, May 17, 1924.

[5] For other classifications see *Practical Exporting*, B. Olney Hough, Chap. IX; *Export Merchandising*, Walter F. Wyman, Pp. 319-327.

agency is granted, those whose territory covers more than one country, or parts of more than one country, and who reside in one of these countries, and lastly those who reside without the country or countries for which the agency is granted.

Sometimes confused with the above classification is that one based on the nationality of the agent. It should be remembered that the residence of the agent by no means determines his nationality. On this latter basis agents group themselves as American agents, native agents or agents of third countries. The first comprise those houses which are controlled by nationals of the United States or persons of recent American origin. Native agents are those who are citizens of the country for which they have agency privileges, and who are at the same time persons who are not of recent American or foreign origin. The third class constitute that group of houses controlled by persons who have recently come from some country other than the United States or the country for which the agency is granted, or who are citizens of such a country.[6] This classification is of particular importance when selecting foreign agents.

Nearly every foreign middleman, regardless of the position he may occupy in the chain of distribution, has been appointed as an agent at one time or another, by one American exporter or another. They are all available as prospective foreign agents. As a result foreign agents may well be grouped according to trade groups. Accordingly we have as export agents houses which specialize in soliciting the exclusive rights of sale of certain American lines. These are commonly known as manufacturers' agents. They may in turn deal largely with large importers, wholesalers, firms doing both wholesale and retail business, and retailers. Seldom, if ever, do they deal directly with the consumer. There are also large importing houses who hold the representation for American lines. These houses are chiefly engaged in importing goods and distributing them to whole-

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[6] This group of agents are sometimes called "foreign" agents to distinguish them from American and native agents. This brings the term into conflict with an identical term, in more common use, and designed to distinguish agents on the basis of their residence. The writer deems it better to retain the term "foreign agent" for the latter purpose, and use some other descriptive phrase, such as "agents of third countries" for the type of agent discussed here.

salers and retailers. Frequently an agency is placed in the hands of a wholesaler whose activities correspond closely with the wholesaler of our domestic markets. Large retailers are also, at times, given the representation of American goods. In certain countries particularly of South America, wholesale-retail houses act as agents for American exporters. Such houses, which sell to retailers and at the same time distribute to the consumer through retail shops of their own, seem to be more prevalent in many foreign countries than in the United States. At times a non-trading concern, such as a bank or engineering firm, has been appointed agent by American manufacturers.

Foreign agents differ also according to the fixity of their selling operations. Here we have on the one hand the so-called "resident" agent, and on the other, the so-called "travelling" agent. The resident agent is one whose main business headquarters, from which his selling efforts radiate and are controlled, are permanently located at some particular place. The travelling agent is always a single individual, rather than a firm or corporation, who travels, periodically, a certain route, often including commercial centers in many countries, soliciting sales for the exporter and having no permanent main business headquarters in such country. He may work out and back from the United States or any other country.[7]

Agents may also be classified according to their type of business organization. The house acting as agent for the American exporter is frequently an incorporated concern. The nature of such incorporation depends upon the laws of individual countries. Or the agent may be organized as a partnership under any one of a number of forms of partnerships allowed by foreign laws. In some instances the agent is merely an individual trading as such.[8]

An important grouping of agents can be made on the basis of whether the goods are purchased by the agent himself or by some third party through the efforts of the agent. The dis-

[7] The essential difference between the traveling agent and the salesman in foreign trade lies in the fact that the former always has a specific grant of exclusive territorial rights for a certain period of time, which is not true of the foreign salesman.

[8] A general, elementary exposition of foreign laws governing business organization can be found in the "*Course In Foreign Trade*," *Business Training Corporation*, Vol. X, Chap. III.

tinction turns on the immediate sales destination of the goods. Those export agents who buy outright from the exporter the goods entering their territory are variously termed "merchant agents," "distributors," "customer agents," or "dealers." The exporter looks solely and immediately to the agent for the payment for the goods, and the agent, in turn, takes complete title to the goods. This, regardless of the fact that the goods may have been shipped direct from the exporter's factory or warehouse to some third party—the customer of the agent—in the agent's territory. It is quite evident that here the agent is buying and selling on his own account, and his remuneration as agent comes from the difference between his sales and his purchase price. Other agents solicit orders only for the account of the exporter, in which case the sale is made by the exporter direct to a third party, who takes immediate title to the goods. The agent is a mere go-between in the transaction. Such agents have been variously designated as "sales agents," "selling agents," "commission agents," "factors," and "brokers." This group of agents receive their recompense for services performed in the form of a straight salary, a straight commission, salary and commission or sometimes a division of the profits. In the latter instance, the status of agent and exporter approaches that of a partnership rather than an agency agreement, depending upon the particulars of the relationship. Some agency agreements allow the agent to act both as a distributor and as a commission agent, in which case, for want of a better term, the agent may be termed a "mixed" agent.[9]

At times the product is not sold at all but is merely leased to the agent, who in turn leases it to his customers. Here there is no sales destination as the title is never transferred either to the agent or his customer. Agents operating under such lease arrangements may well be called "lessee" agents.[10]

Classed according to selling rights there are exclusive agents and semi-exclusive agents. An exclusive agent is one who has the sole rights in all sales of goods in the territory covered by the

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[9] Such an arrangement was found in several of the foreign agency contracts submitted to the writer by American manufacturers.

[10] See Chap. X, Pp. 95.

agency agreement. That is to say, the exporter agrees to sell all the goods covered by the agreement and destined for the territory through the agent, thus assuring the latter his commissions and/or discounts on all sales in the territory. Under such circumstances, even though the order for goods came directly from a third party in the agent's territory without the latter's mediation or effort, or without being a result of the same, or if the order was placed by some American or other commission house and the goods were known by the exporter to be destined for the agent's territory, the agent would nevertheless receive a full or split commission on the same. Such a commission is paid an exclusive agent even on orders solicited in the agent's territory direct by the exporter where the agency agreement permits this.

However, certain agents do not have exclusive selling rights on all sales of goods in their territory. Their rights are modified in various respects.[11] First, it is frequently found that sales to Governments—in some cases only the foreign country's government, in other instances all governmental bodies, federal, state and municipal and their various departments—are reserved to the exporter and the agent receives no commission nor has he any claim for commission on such government sales. Secondly, certain agents have no rights to commissions on sales made by the exporter to a commission house, even though the goods be destined to the agent's markets. In this respect their exclusive selling rights may have been considerably abridged, depending upon the importance of commission-house selling in this market. The semi-exclusive agent, furthermore, may have no claim to commissions where the exporter solicits direct large-quantity purchasers in the agent's territory and the state of competition compels the exporter to cut his price to such a point that he can not afford to pay a commission to the agent on this business. Where an agent has no such exclusive sales rights with consequent protection of commissions or other form of profits he can not, in the sense in which the term agent is here used, be considered as an agent at all. He then becomes a mere customer.

[11] The modifications of foreign agents' exclusive selling rights given here are based upon the analysis of some ninety foreign agency contracts.

At times the term "general agent" has been used in contradistinction to exclusive agent. As a matter of fact the general agent is an exclusive agent of a peculiar type. Where an exclusive agent is appointed the exporter agrees to appoint no other agents or sub-agents in that territory without the consent of the exclusive agent. If the agent is, however, a general agent, the exporter has the right to appoint any and as many other agents in that territory as he may choose.[12] However, a split commission must be paid the general agent on all sales to or through the other agents in his territory. Thus it is seen that he has exclusive sales rights. The difference between the two types of agents lies in their control over the appointment of other agents in their territory by the exporter.

Agents are also grouped according to the degree of commodity specialization followed by them. Some houses hold agencies for a large number of related and unrelated lines and endeavor to exploit the market for all of these different goods. These are known as general import houses. Other houses which act as export agents confine their efforts to a relatively small group of related lines, such as machine tool houses, agricultural machinery houses, iron and steel houses, etc. Many agents handle but one or two commodities. This is often the case in automobile agencies where the agent is confined to the sale of just one make of automobile or perhaps two non-competitive makes.

Stocks of goods may or may not be carried by the agent. If he carries stocks, he is frequently termed a warehousing agent or a consignment agent. Although the distinction is not closely followed by exporters it might be well, for the sake of clarity, to call the agent a warehousing agent when he stocks goods on his own account. In those cases where the agent carries stocks of goods for account of the exporter, the title to the goods remaining in the exporter, the agent is properly termed a consignment agent, and this is the terminology largely used in export circles.[13] Some agents carry no stock. They might, for want of a better term, be called "non-stock" agents.

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[12] Statement made by Mr. Marcos J. Trazivuk, foreign representative of L. E. Waterman Company, March 2, 1925.

[13] See A. J. Wolfe "*Selling Abroad On a Consignment Basis*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, Feb. 12, 1923.

The amount of credit responsibility assumed by the agent varies. Agents assuming complete credit responsibility for all orders from third parties placed with the exporter by them are known as "del credere" agents. In such cases, although the agent is acting purely on a commission basis, he guarantees to the exporter the payment of the order in accordance with the terms of the sale. The "ordinary" agent, on the other hand, takes no responsibility whatsoever for the payment of the order by the third party at time of maturity. Between these two extremes there are several kinds of modified del credere agents.[14] At times such agents may fully guarantee the payment of the shipment on certain orders only, especially where the exporter is not satisfied with the credit standing of the customer or is unable to obtain what he deems adequate credit information on him, although the agent is satisfied that the risk is good and is willing to assume the role of guarantor. Sometimes such an agent will guarantee payment by the customer of a certain percentage—usually 50 per cent—of the total invoice value plus advances made to the customer in the form of ocean freight, marine insurance premiums, etc., on all orders. The guarantee, whether complete or partial, may apply only after the goods have been accepted by the customer, or it may include the commercial risk involved in the refusal of the customer to accept goods because of delay in arrival, damaged condition at arrival, failure to correspond to samples, description or guarantees, or losses due to claims of this nature lodged subsequently to delivery and acceptance by the customer. At times the agent is an optional del credere agent, in that he may or may not guarantee the payment of the order as he sees fit. Should he do so an extra commission is allowed him.

Classified according to the directness of the relationship existing between the exporter and the agent there are two types of agents: the direct agent and the sub-agent. The direct agent is appointed by the exporter himself, and it is with him that the exporter has the major portion of his negotiations and dealings. The direct agent holds his powers and rights by direct grant

[14] The kinds of modified del credere agents cited in this paragraph are based upon the del credere clauses found by the writer in foreign agency contracts.

from the exporter. Sub-agents are agents appointed practically always by the direct agent for the purpose of carrying out his obligations and exercising his privileges under his agency agreement with the exporter. The exporter may, of course, require his approval of all such sub-agents and may reserve the right to co-operate directly with them in stimulating sales. He may require that such sub-agents be compelled to sign a specified sub-agency agreement drawn up by him, or he may refuse to have any relations with such sub-agencies, compelling the direct agent to assume complete responsibility for their appointment and conduct.[15] When a general agent is used the local agents are appointed by the exporter himself who deals directly with them on many agency matters. They would, therefore, be considered direct agents.

Foreign trade includes both exporting and importing. Agents engaged in foreign trade often confine their efforts to one or the other branch. Hence we have both export agents and import agents. An export agent is one who exports or assists in exporting goods from the country in which he operates. The import agent, on the other hand, is engaged in importing goods into the country in which he operates. There are also many agents who engage in both exporting and importing. They may be termed export-import agents. In discussing the export trade of the United States one has to do with domestic export and export-import agents and foreign import and export-import agents.

Exceptional Classes of Agents

There are certain special types of agents not in general use. One such type is the so-called "indent" agent. It is difficult to give a precise definition of such an agent due to the loose use and broad application given the term in practice. However, ordinarily an indent agent solicits orders for the exporter on a commission basis, using samples, catalogues and price lists, making up and forwarding the indents (orders) of his customers to the exporter, who ships direct to the customers and assumes the credit risks.[16] The agent does not carry stocks. The dis-

[15] As per the clauses found in foreign agency contracts.
[16] As found in a foreign agency contract.

tinctive characteristic of this type of agent lies in the limited functions which he will ordinarily perform. He is in reality a very simple type of commission agent. There is also the "manufacturing" agent, so-called in the absence of a better term, who has been granted the right not only to sell but to manufacture the product of the American company for sale in a restricted territory.[17] He is found now and then where the product is a preparation made by some secret and patent chemical formula or process controlled by the American company, and/or where import duties on the finished product are prohibitive. We also occasionally find a "transitional" agent who holds the agency rights to a certain territory but temporarily, usually until the exporter can find a satisfactory permanent agent for that territory.[18] He holds such rights in addition to a permanent agency for a nearby territory. The agency is granted him with the specific understanding that it is good only until the exporter can make satisfactory permanent arrangements of representation in the territory. The writer has found one instance of a "two-party" agent where two different houses were jointly given the exclusive rights to work a certain territory as agent of the exporter.[19]

Limitations and Value of the Classification

While the above sets forth the important classes of agents it is well recognized that each individual agency arrangement is distinctive in one detail or another. Furthermore the classes based upon any one major characteristic of the agent at times shade off into one another.[20] In the method of classification above

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[17] As described in a foreign agency contract.

[18] Such agents were appointed by the terms of various foreign agency contracts submitted to the writer.

[19] Statement of Mr. Francis de St. Phalle, Vice-President in Charge of Foreign Sales, Baldwin Locomotive Works, Philadelphia, Pa.

Also, letter received from Mr. A. S. Hillyer, Chief, Commercial Intelligence Division, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, dated Feb. 17, 1925.

[20] For instance, on the basis of the lines handled there are general houses and special houses acting as agents. However, between the general house handling the representation of almost any and every line, and the extremely specialized house representing and handling but one product there are innumerable gradations of commodity specialization. A somewhat similar situation exists in those classes of agents based upon the nationality of the agent, the trade group to which he belongs, the credit responsibility of the agent, and the directness of the relationship with the exporter.

no one class is completely descriptive of the agent. It merely presents a distinctive difference as between agents with respect to the one major relationship of the agent to the exporter under consideration. Nor can these classes be combined indiscriminately to form certain synthetic classes of agents, for in practice certain of the major relationships are incompatible with others.[21]

The classification does, however, present in a compact and simple way the major variations in the kinds of foreign agents. In so doing it allows a ready understanding and familiarity with agent terminology. The use of these terms rather than the general terms of foreign agent or export agent, should facilitate a more scientific treatment of agency studies. Above all, however, the classification is of value in that it gives a comprehensive idea of the major variations in the agency relationship which are available when the selection of an agency and the drawing up of an agency agreement are under consideration.

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[21] Obviously there can exist no such combination as a del credere—merchant agent, nor do we find in practice any warehousing—traveling agents.

II

DESIRABILITY OF USING FOREIGN AGENTS

Once a manufacturing exporter has decided to engage in direct exporting the question persents itself as to whether it is desirable for him to use the foreign agency method in any one or more of his foreign markets. Although this problem may have been solved in part in arriving at the decision to export direct, the two problems are by no means identical. The decision to use foreign agents can only be satisfactorily reached by giving it special study.

Fundamental Prerequisites to the Use of the Foreign Agency Method

There are certain prerequisites to the use of the foreign agency method. It is obviously necessary, in any event, that the foreign market be large enough to justify the appointment of foreign agents. This does not mean that it must be immediately productive of a volume of sales which will net a profit. However, it does imply that within a reasonable period of time—which might vary from one to five years, or longer, depending primarily upon the nature of the market and of the product—the market can be developed to produce a substantial profit on sales in subsequent years. Otherwise it is evident that the manufacturer would have wasted the energy and expense involved in the appointment of agents and the development of his agency distribution system. Likewise would it prove a hardship upon the agents whose meagre commissions during the early years would hardly compensate for the extraordinary efforts and expenses required during the introductory and developmental stages. A reasonably accurate estimate of the market possibilities should afford a sound basis for deciding upon the nature of the foreign distribution system (although certainly not the sole nor ultimate determinant) and it can also be used to ad-

vantage in drawing up the agency agreement,[1] or in conducting branch houses or manufacturing abroad.

It is quite as imperative that the manufacturing exporter have sufficient financial resources to properly "carry on" in the agency arrangements.[2] Just as important as this is the *willingness* on the part of the manufacturer to expend financial sums commensurate with the proper establishment and support of a system of foreign agents. The financial requirements in establishing an agency system are not usually as great as when branch houses are created or where manufacturing plants are established abroad. It is also true that there is no necessity for constructing world-wide agency distribution immediately. But the finances needed over a period of time necessary to the complete development of the agency system must be forthcoming in proper amounts and at the time needed. A number of the collateral responsibilities which the exporter should assume under agency distribution and which are mentioned below, such as, the creation of a home export organization, adequate foreign sales promotion, credit extensions in keeping with export trade practice, and introductory losses may require substantial money outlays.

No manufacturer can hope to succeed with agency distribution abroad unless he is in a position promptly to produce sufficient goods to take care of his agent's requirements.[3] A productive capacity sufficient to meet every possible demand of the foreign markets even under conditions of extraordinary domestic demand is not necessary to the utilization of foreign agents, but long-run and ultimate success with foreign agency distribution requires of the manufacturer an unconditional productive capacity which will take care of his foreign agent's markets under all normal circumstances.

A further prerequisite to the use of the foreign agency method is adequate executive direction and control. The selection and appointment of foreign agents is in itself a difficult problem.

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[1] See Chapter XI, Page 103.

[2] See Francisco Villanueva, Jr., "*Appointing an Agent in the Philippines*," *Export Trade*, July 17, 1920.

[3] *Ibid.*

Once a satisfactory chain of agencies has been established, however, the real work has just begun. Such a system of agencies will not in and of itself function smoothly and effectively. It requires the highest type of intelligent stimulation, direction and control. The manufacturer must provide an executive of standing and power who understands export trade in its broadest and most fundamental respects, and who is master of its infinite detail, to constantly charge this system with sales ideas and sales enthusiasm, to guide the agents' efforts along the most productive channels and assist them in meeting sales obstacles, and to discipline and control their activities so as to keep them in line with the manufacturer's export policies and principles—all this, in that sympathetic and tactful way which ripens human contacts into solid and lasting friendships.

Lastly, the manufacturer must set up an export policy and follow it consistently.[4] The manufacturer without any definite course or plan of action relating to his export trade is forever an unknown quantity to the agent. Where the manufacturer has established no standards of export practice the agent can never know with certainty what he can expect of the former in any given circumstance. Shipments may be made promptly, or they may not; today the manufacturer extends liberal credit, tomorrow, for no good reason, he restricts credits; in one instance the manufacturer protects the agent on an indirect shipment into his territory, in another case, under the same conditions, the agent gets no protection. Without an export policy there can be no definitely established objectives or thought-out plans of attack. Such lack of policy on the part of the manufacturer engenders ill-feeling between himself and his agent, makes it impossible for the agent himself to establish a definite selling plan, precludes any intelligent coordination of manufacturer's and agent's efforts, destroys the agent's confidence in the manufacturer, and antagonizes the trade.

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[4] See Walter F. Wyman, "*Why are Export Policies Indispensable?*" *Export Trade*, March 18, 1922. Also, Ernst B. Filsinger, "*The Essentials of Successful Exporting*," *Export Trade and Finance*, June 30, 1923. The statements in these articles relative to export policy pertain to export trade in general. However, they hold with equal force when applied specifically to the foreign agency method of export distribution.

Manufacturer's Collateral Responsibilities Under The Foreign Agency Method

While the aforementioned factors represent the fundamental prerequisites to the satisfactory use of the foreign agency method of distribution, there are other collateral responsibilities which are bound to follow along with the adoption of such a system. It becomes necessary to build up some sort of special export department at home in order to handle adequately the foreign agency problems which continually arise. This necessitates the determination of the proper functions of the department, the gathering of its necessary personnel who must thoroughly understand foreign trade technique and practice, the proper organization and maintenance of this export organization, and the development of an effective liaison between it and the remainder of the manufacturer's organization.[5]

Furthermore, it means that the manufacturer must be ready to put forth the requisite sales promotion effort. As with his domestic agents, so his foreign agents must be given the proper co-operation through dealers' helps of various kinds.[6] It might well be that foreign agents handling the particular line in question are accustomed to and expect the manufacturer to do considerable advertising direct to the consumer. In any event the manufacturer should be able to assist the foreign agents in the advertising done by them. The manufacturer must also be ready and willing to sustain the usual introductory losses during the early period of agency exporting.

Other responsibilities may thrust themselves upon the manufacturing exporter using a system of foreign agents. He may find that the credits necessary to employ successfully this system of distribution abroad are much more burdensome than those required in his domestic trade. Usually in exporting direct, regardless of the method of distribution used, the credit period is longer and difficulties of obtaining credit data on prospective risks are greater than is true of domestic selling. He must establish

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[5] For a good discussion of the organization of export departments, see *Export Merchandising* Walter F. Wyman, Chapters 5-7 inclusive.

[6] See Chapter XII.

some system of obtaining such credit information. Unforeseen foreign exchange fluctuations may considerably alter the nature of the risk after the credit has already been granted. Furthermore, peculiarities of the foreign markets and the problems met in them by the foreign agents require the exporter in many instances to cater specially to them. Peculiar buying habits, "freak" tastes of foreign peoples, their prejudices, must all be given due regard by the exporter. It may well necessitate minor changes in the design, packaging, or labeling of the goods, with the resulting inconvenience to his production and shipping departments. From the standpoint of the success of the agents, however, they may be imperative. A definite allotment of production to export trade often becomes a necessity in order to protect the manufacturer's foreign markets and agents.

Services Obtainable from Foreign Agents

With a complete understanding of what is required of the manufacturer to use successfully the agency method of distribution abroad, the question arises as to what services he can expect from foreign agents. Such services might be classified, for convenience, into direct sales services, indirect sales services, and facilitating services. The foreign agent's direct sales services include the provision of a selling organization abroad for the manufacturer.[7] This is usually a going concern, more or less complete in organization and equipment, already created for the use of the manufacturer, through the assistance of which he can push his sales in the foreign territory at once. Such a sales organization has already accumulated, furthermore, considerable experience in selling goods in its market. It can therefore frequently head off the mistakes of the manufacturer, who has often but little knowledge of the market's peculiarities, and thus avoid bad first impressions on the trade and damaging and costly

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[7] See James W. Hood, "*The Stabilizing Effect on American Industry of a Definite Foreign Trade Policy*," *Official Report of the Sixth National Foreign Trade Convention*, 1919, Pp. 86-88. The statements made here apply equally to both domestic and foreign agents.

Also, A. J. Wolfe, "*Solving Export Problems*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, December 18, 1922.

errors.[8] The use of the agent's organization thus makes for well-chosen introductory efforts and quick sales realization.

The foreign agent can further render valuable aid to the manufacturer in providing the service which is indispensable to the sale of certain commodities.[9] This is particularly true of mechanical goods. Their successful use requires at times an immediately available and adequate supply of repair parts and the presence of some one who is skilled in making repairs.[10] In fact, the manufacturer, under his warranty, may be compelled to provide free repair facilities during the period of guarantee. The machines may, furthermore, need to be shipped "knocked-down" in which case it is necessary to set them up for the users. A resident agent furnishes such service. Adequate facilities for displaying and demonstrating the product, as well as personal instruction in the use of the machine can be provided by the foreign agent. Where goods are sold by sample the agent may keep on hand such samples, or even make up samples, or revise such samples according to the preferences of the buyer.[11] Goods may be shipped to the agent and repacked by him in units and assortments demanded by his market.

The agent's continual presence in the market enables him to keep the manufacturer's goods constantly before the trade and the public.[12] Many commodities, particularly specialties, depend much upon constant repetitious sales effort to establish and maintain their market. Agents can be effectively used to this end as they are in the market year in and year out. Furthermore, permanently residing in the market, the agent can take

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[8] See A. J. Wolfe, "*Solving Export Problems*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, December 18, 1922.

[9] For examples of the importance of the service function of the foreign agent see F. A. Babcock, "*Placing the Specialized Product on the Foreign Market*," *Export Trade*, August 12, 1922; also R. N. Cliffe, "*Selling Batteries and Service in South America*," *Export Trade*, October 28, 1922.

A letter received from an exporter of a technical specialty contains the following: "Many technical problems are involved in the proper application and use of electrodes, so that the merchandising involves a very considerable amount of technical service. . . . We impress upon our customer and upon our representatives that the principal duty of the latter is to render service."

[10] The foreign agency contracts examined by the writer showed foreign agents carrying repair stocks in many instances.

[11] See Francisco Villanueva, Jr., "*Appointing an Agent in the Philippines*," *Export Trade*, July 17, 1920.

[12] See *Practical Exporting*, B. Olney Hough, Pp. 348.

immediate advantage of special selling opportunities arising from such exigencies as fires, floods, and the advent of new enterprises.[13] When bids are solicited as is often done on construction work and materials, or where very large orders are placed, the time allowed for getting bids in after the proposition has been announced is sometimes too brief to refer all specifications and details to the American offices. Here the agent is in a position to communicate immediately with the exporter on the main requirements of the proposition and get in a bid for his client before the closing date for bids.[14] Should such requests for bids come from a governmental body the laws of the country governing such business may make it particularly advantageous to have a resident agent there.[15] The agent is also in a position to expedite the forwarding of inquiries to the manufacturer's offices in the United States where time is the essential element in landing the business.

Where a network of sub-agents must be created to exploit the market the foreign agent can do much of this work himself, relieving the manufacturer of this burden. His intimate knowledge of the houses in his country may be invaluable in this respect and save the manufacturer much time and expense. He is also able to give continuous sales assistance to the dealers handling the product and co-operate with them in meeting market obstacles. Where the policy of the company is to endeavor to maintain a uniform retail price the agent, being on the ground, can readily detect violations on the part of the dealers.

The agent also forms a medium through which the manufacturer can take advantage of such local sales intermediaries as exhibits, expositions, fairs, and the like.

Agents regularly assist in the advertising of the manufacturer's product. They, on their own account, advertise the representations which they hold. They are also in a position to offer suggestions as to nature of copy and illustrations, suggest the

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[13] *Ibid.*

[14] Instances of this sort are cited in an Editorial entitled, "*American Exporters Need Representatives Abroad,*" *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S Department of Commerce, July 30, 1923.

[15] See Page 34.

most desirable media, assist in obtaining favorable positions and rates, and check up on the media chosen to see that they abide by their agreements.[16] They form an effective means of proper distribution of all kinds of dealer helps. Being on the spot the agent is able to form an intelligent opinion of the comparative results obtained from various forms of advertising.

The agent also affords the manufacturer a ready-made avenue of approach to the market. The former is already established in the market.[17] He has formed many business acquaintances and friends. His name and his house are known to the trade. He is accepted as one of them. The manufacturer and his product are well introduced through him, and are assured, in a measure, of a favorable reception. It is a natural and "acceptable" approach to the market. Without the agent's mediation, the manufacturer is in a large measure a "stranger" to the trade, despite all the preliminary advertising he may do. He has not been "vouched for," so to speak. In addition the agent can assist salesmen sent direct from the Unites States to do missionary work in his territory, by working up a local itinerary for him, seeing that he is introduced to the trade, that he is provided with a traveler's license and that information on the trade is placed at his disposal.

Besides these direct selling functions which the agent can take over, he stands ready to perform numerous other services which indirectly assist sales in a large measure. Being on the ground, and knowing his market of old, an agent can give the manufacturer current first-hand information regarding market conditions and outlook along with valuable data on political and financial conditions.[18] He can also render intimate reports on the credit standing and commercial practices and characteristics of prospective buyers, and recommend the proper terms of sale and line of credit.[19] This is often of particular value to the

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[16] See Editorial, "*Representation in South Africa*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 7, 1924.

[17] See Francisco Villanueva, Jr., "*Appointing an Agent in the Philippines*," *Export Trade*, July 17, 1920.

[18] "We judge the value of an agent to a considerable extent by his ability to secure information on operating conditions and the requirements of users of our product." From a letter received from a manufacturing exporter of a mechanical specialty.

[19] See Page 33.

manufacturer in the less commercially developed countries where reliable credit data is difficult to obtain. He may guarantee credits.[20] At times agents are in a position to furnish the manufacturer with buyers' lists containing the names of persons who would be interested in the manufacturer's line.

By carrying stocks, bought outright from the manufacturer, or held on consignment, immediate deliveries can be made to purchasers.[21] This is always a valuable competitive advantage. Where the product is of such a nature that the usual dealer order is relatively small the manufacturer can combine a number of the individual orders into a large shipment and consign them direct to the agent with a consequent saving in both rail and ocean transportation charges. The agent can then break such shipments and send the individual dealers their respective quantities.[22] An agent may, furthermore, be handling a key product of an allied line of goods, of which the manufacturer's is one, and in such a case he can almost assure the manufacturer of a good outlet for his line.[23]

The agent can assist in properly grading prices according to the recognized trade position of the purchaser. He can advise whether the latter is a wholesaler, a retailer, or a recognized quantity buyer usually given special discounts so that the manufacturer can afford all these proper price protections in his quotations. The position of the agent, intermediate between that of the manufacturer and of the customer, enables him to use his good offices effectively in settling mistakes, complaints and misunderstandings which are bound to arise between the two parties. The political contacts which the agent has may be all-important in handling certain kinds of business.[24]

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[20] This function was performed by several agents under the terms of agency contracts analyzed by the writer.

[21] See C. E. Carpenter, "*Selling American Machine Tools in Europe*," *American Machinist*, November 1, 1917.

Also Vivian Radcliffe, "*The Follow-Up System in Export Business*, *Export Trade*, August 26, 1922.

[22] See *Practical Exporting*, B. Olney Hough, Pp. 353.

[23] This would be true of the agricultural implement trade. See, "*Selling in Foreign Markets*," *Miscellaneous Series No. 81*, Bureau of Foreign and Domestic Commerce, Department of Commerce, Chapter III, Pp. 153.

[24] For the services enumerated in this paragraph see, *Practical Exporting*, B. Olney Hough, Pp. 348-357.

Foreign agents facilitate the routine matters connected with handling transactions.[25] They can handle the invoicing and billing of goods for the manufacturer. They advise the manufacturer as to customs regulations and expedite the entry of goods. They will protest customs classifications and rates of duty applied. They will make and carry through claims against carriers in the third country. They may collect the regular accounts and handle overdue accounts for the manufacturer. They stand ready to take notice from banks on drafts not met by the payee. They will select banks of deposit, or attend to depositing the funds of the manufacturer held in the foreign country. They can inform the manufacturer of the legal technicalities which arise in doing business in their territory.

At times agents will manufacture the goods for the American producer or further process the goods although such services are by no means commonly performed by agents.[26]

However, the other services previously enumerated are commonly performed by foreign agents. This does not mean that every such agent will take over all these functions for the manufacturer. The policies of agents and the services they perform vary, but in almost every line a certain number of agents stand ready to render practically all of the abovementioned services. It must also be understood that certain manufacturers may not care to have all these functions assumed by the agent, but may deem it more desirable to perform certain of them themselves. The comparative importance of the agent's services listed above will, of course, vary with the nature of the manufacturer, the type of product, the complexion of the market, and the characteristics of the agent himself.

Foreign Agency Method versus Other Methods

With a knowledge of what is required of him in using foreign agents, and what, in turn, he may expect of them, the manufacturer is ready to make a comparison of the net advantages, if

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[25] See Francisco Villanueva, Jr., "*Appointing an Agent in the Philippines*," *Export Trade*,, July 17, 1920.

[26] From a statement and foreign agency contract submitted to the writer by a manufacturing exporter of patent medicine.

any, of this method over other possible distribution arrangements.[27] There are certain means of engaging indirectly in the export trade. Where the manufacturer's goods are sold through export commission houses, export merchants, export brokers, and export manufacturers' agents residing in the United States, the manufacturer is said to export indirect. As a matter of fact where such American media are used exclusively the manufacturer himself can hardly be said to be in exporting at all as practically none of his efforts reach out to the foreign market. He sells essentially as he would in his domestic market and the burden of meeting the special problems of export markets rests entirely, or very nearly so, upon the shoulders of the American export houses. Where the manufacturer signs up exclusive agency agreements with such houses, however, he may be compelled to assume certain definite responsibilities relating directly to foreign markets. In such cases the manufacturer is, in fact, in exporting, and agency arrangements with such American houses can properly be considered as alternative methods of foreign distribution, although they are indirect methods.

Besides this, the manufacturer has available certain direct export methods, other than the foreign agency system. The manufacturer may sell abroad through an allied company, *i. e.* another company manufacturing a line of its own, by using the latter's foreign selling organization. He may create a subsidiary company to sell, or both manufacture and sell abroad, he may establish a branch house in his foreign markets which may be unincorporated, or incorporated under American laws or those of the foreign country. The manufacturer may depend solely upon traveling salesmen routed from his American headquarters who make periodical visits to foreign markets. He may depend exclusively upon the mails to sell abroad.

Due to the fact that the problem of determining upon one method of distribution or another varies widely with the peculiar

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[27] For a discussion of other methods of export distribution see, *Foreign Trade Organization* J. Anton deHaas, Chapter XIII; *Practical Exporting*, B. Olney Hough, Chapters VIII and IX; *Essentials of International Trade*, Simon Litman, Chapters XVII to XIX; *Exporting to the World*, A. A. Preciado, Chapters III, VIII, IX; *Principles of Foreign Trade*, Norbert Savay, Chapters XII and XIX; *American Methods in Foreign Trade*, George C. Vedder, Chapters IV, V, IX, XVI; *Export Merchandising*, Walter F. Wyman, Chapters X to XV, XVII, XVIII.

circumstances of each individual case, it is impossible to lay down any invariable rules governing the desirability of any one method even after all possible care and foresight are exercised. The best solution is only arrived at after much experiment and experience upon the part of the manufacturer. Changing conditions at home and abroad will, furthermore, alter the relative desirability of any method of distribution.[28]

The best that can be done here is to point out those circumstances which particularly favor the use of agents over the other available methods. Where the possibilities of the market give promise of only a moderate volume of sales for some time to come the foreign agency method is very effective. The agent handles a number of lines and only moderate sales of each still enable him to earn substantial total commissions. Such a condition is likely to eliminate the use of allied companies, subsidiary concerns, branch houses, and American salesman routed from the United States. The cost would be excessive. Where repair service and spare parts must always be at hand, or where the supervision of these must be close and continuous, the foreign agent is surely more effective than the use of salesmen making only periodic visits to the country. Mail-order methods are impossible here. When the product requires constant intensive sales efforts, and, especially when this condition is combined with the necessity of selling small units through many dealers, the foreign-agent method is found effective. Usually such products do not permit the use of branch houses or allied or subsidiary companies because the volume of total sales is restricted. At the same time purely mail selling efforts can never attain the degree of intensity of sales efforts required by the goods.

The foreign agent's intimate knowledge of local sources of credit information, his access to certain sources which the manufacturer's branch house or subsidiary could not reach, and his personal knowledge of the past practices of dealers make him probably the most effective local medium for this purpose.[29]

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[28] Ernst B. Filsinger, "*Manufacturer's Agent or Merchant Distributor*," *Export Trade and Finance*, May 12, 1923.

[29] See Charles E. Jennings, "*Building Quality Markets Abroad*," *System*, May, 1920, Pp. 958. Also, *Practical Exporting*, B. Olney Hough, Pp. 350.

When foreign governments are large buyers of the product the laws governing bidding on such business may make it imperative to use a foreign agent who is a resident or citizen of that country. His political influence, in any event, can be used to value in getting such business—and this by no means implies unscrupulous business practice. There is a proper, as well as an improper use of such connecitons. Even where the foreign law does not make any such requirements as above, local administrative measures and the practice of local authorities in countries outside the United States and Great Britain make the resident agent almost absolutely necessary in effectively soliciting government business.[30] Where the trade is particularly hostile to the establishment of branch houses or subsidiaries of American manufacturers in their country the foreign agency method affords a way to avoid this early antagonism.[31] Much also depends upon whether the manufacturer can obtain a foreign agent of the calibre he desires.

It should not, however, be thought that the use of the various methods of foreign distribution by the manufacturer are mutually exclusive. One market may require the foreign agency method, another may best be exploited through a branch house, whereas the laws of a third country and its trade conditions may call for the organization of a subsidiary company by the manufacturer. The proximity of some other market may dictate the use of salesmen sent out from the United States periodically. The American commission houses may be so strongly intrenched in some fifth country that the manufacturer finds it best to use such a house as its agent. Thus we could well have five distinctly different systems of distribution in use by the one manufacturer. Furthermore, even in the same country or market the manufacturer may use a branch house and also appoint foreign agents.[32] Subsidiary companies may also be used in conjunction with

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[30] Letter received from Mr. Guerra Everett, Chief, Section of Legal Information, Division of Commerical Laws, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, dated Feb. 18, 1925.

[31] See Charles E. Jennings, "*Building Quality Markets Abroad*," *System*, May, 1920, Pp. 958.

[32] From a letter received from the assistant manager of the export department of a large manufacturer of petroleum products.

foreign agents in the same market.[33] Salesmen also travel direct from the United States to markets where foreign agents are used, as well as where branch houses are established. It is, in the final analysis, a question of fitting the distribution machinery to the needs of the market. This problem may involve all sorts of combinations and compromises in methods

[33] *Ibid.*

III

SELECTION OF FOREIGN AGENTS

The Importance of Selection

Perhaps the most critical foreign agency problem lies in the proper selection of the agent. The explanation of this can be seen when one considers the strategic position of the agent in foreign distribution.[1] He is in immediate and continuous contact with the customers. He is thus in the most effective position to influence the market for good or bad. He is located, furthermore, at the point of maximum stress. He is hit first by market reverses. The customers look directly to him for satisfactory settlement of complaints and claims. Upon the agent is placed the chief burden of executing sales policies and forcing sales. His success in handling these matters means the difference between a profitable and non-profitable market to the manufacturer. More than this he is located far from the manufacturer's headquarters. It is impossible to give his efforts that close and intimate supervision and assistance possible in the case of domestic agents. Much must be left to his discretion. Much depends upon his ability to make the most of every sales weapon placed in his hands by the manufacturer, by properly adapting them to the ever-changing conditions of the market. Despite the manufacturer's greatest efforts, he must still depend largely upon the agent's initiative and intelligence.

The selection of a poor agent is particularly disastrous because it is difficult to remedy or even ameliorate the bad effects of such a situation. One cannot hope to compel a poor agent to become a good agent through the drawing up of a "water-tight" agency contract.[2] The most comprehensive and skilfully drawn contract

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[1] See Editorial "*Fundamental Principles Often Disregarded*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, April 23, 1923; A. J. Wolfe, "*Agency Contracts in Foreign Trade*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, February 6, 1922; "*Where Irresponsible Agents Wreck the Market*," *Export Trade*, June 10, 1922.

[2] See also Chapter V.

will not add one iota to the ability of the agent. Furthermore, an agent might be able to comply with every word of the contract, yet violate the spirit of the agreement in his every act. Even should the manufacturer, by virtue of the agency contract, be in a position to bring pressure upon the agent he would find this method would produce little results with an incapable or dishonest agent. True, the manufacturer can usually cancel the agency agreement upon short notice. But changing agents is an expensive operation.[3] It is bound to affect sales adversely during and for some time after the changes. The first agent is likely to look about him for a competitive line to sell to his regular clientele. Furthermore, it tends to give the manufacturer a bad reputation among other foreign houses eligible for such a representation. How much better it is, in any event, to *prevent* trouble by selecting the proper agent in the first place.

Sources of Information on Foreign Agents

The manufacturer will do well to obtain as complete information as possible regarding prospects for the agency. There are a number of sources from which he can get suggested names of likely foreign houses along with data relating to them. The Bureau of Foreign and Domestic Commerce of the Department of Commerce of the United States has on file, in its Division of Commercial Intelligence, data on some one hundred and seventy-five thousand foreign concerns.[4] Many of these houses are ready to represent American lines. The data compiled on such prospective agents incudes the names and addresses of the foreign houses, the classes of goods they handle, the character of their business, that is, whether they are jobbers, wholesalers, retailers, commission merchants, or sales agents, whether they buy chiefly in their own market or from foreign countries, the language in which they correspond, their code address and the

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[3] See A. E. Ashburner, "*Developing a Foreign Department*," *Official Report of the Fifth National Foreign Trade Convention, 1918*, Pp. 195; Editorial "*Better Publicity for Foreign Agents*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, May 21, 1923.

[4] Estimate of Mr. Arthur S. Hillyer, Chief of Division of Commercial Intelligence, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce.

codes they use, whether they are corporations, partnerships, etc., the year they were established, the location of their head office and branch houses, the number of traveling representatives they employ and the territory covered, whether they maintain representatives in the United States, the paid-in capital of their business, their annual sales volume, the number of their employees, the names, titles, ages and nationalities of the managers or partners, the names, addresses and nationalities of those controlling the capital stock, the names of the firms for whom they hold agencies, the general reputation of the concerns, whether they are favorable to American trade, the extent to which they protect their stock by insurance and their bank and trade references.[5] The Bureau will also point out sources of credit information on the prospects they suggest. In writing to the Bureau for names and data upon prospective agents the manufacturer should state the main features of his agency proposition, particularly the nature of his line of goods, whether he expects the agent to stock the goods or sell as a commission agent, what commission on net sales he is ready to pay the agent, what territory he desires to cover, and whether the line is already being sold in that country.

The American consuls, commercial attaches, and trade commissioners also stand ready to give the manufacturer assistance in selecting agents for their districts. Most of the information they have, however, is already compiled in the files of the Bureau of Foreign and Domestic Commerce.

The Philadelphia Commercial Museum has been systematically compiling sales and credit data upon foreign houses handling American lines for nearly thirty years. Their Foreign Trade Bureau has a file of some two hunderd thousand or more foreign houses containing information on their business classification, their type of organization, the lines handled by them, location of their principal office and branches, founders of the house, date of beginning business, present owners, their trade references, their methods of selling, their local trade standing, financial statements of many houses, as well as invaluable credit infor-

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[5] See Appendices A and B.

mation.[6] They attempt to obtain such data, in all cases, from several independent sources: statements from the foreign houses themselves, data from disinterested traders in the foreign country, from banks located abroad, and from the trade references given by the foreign house. Such information is kept current by the reports constantly coming in from the paid correspondents at various points throughout the world. The Foreign Trade Bureau of the Commercial Museum places the data they have on available foreign agents at the disposal of their contributing members. They will also advertise under their own name in trade journals circulating abroad stating that they have learned of certain manufacturers' representations which are open to creditable foreign houses. Under this method the representation is not cheapened in the eyes of the trade as it would be if such general advertising were done by the manufacturer himself. Where manufacturers so desire, the Bureau will write individual letters to desirable prospective agents describing the manufacturer's proposition in full but omitting any reference to his name. The replies of the foreign houses, along with the data which the Bureau has upon those concerns, is then placed before the manufacturer. The Bureau will also make special investigations on such houses, frequently using the cable for this purpose. The services of the Foreign Trade Bureau of the Philadelphia Commercial Museum are available to all contributing members. The fees are graded according to the kind and amount of services required by the manufacturer, including not only the above, but other services.

The Pan-American Union "maintains a list of qualified Americans who seek all kinds of positions in Latin America."[7] It does not vouch for these persons but will pass their names along to interested parties.

Of the purely private sources of information on possible agents there is the National Association of Manufacturers of the United States of America. They maintain a large file of resident

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[6] Estimate of Mr. George C. Gibson, Assistant Chief of Foreign Trade Bureau, Philadelphia Commercial Museum. See Appendix C.

[7] Letter received from Mr. W. A. Reid, Trade Advisor, Pan-American Union, dated January 12, 1925.

agents in all countries. The data they gather on these agents is quite similar to that kept by the Bureau of Foreign and Domestic Commerce. Like the Commercial Museum, they are ready, in addition, to give credit information on possible agents. They are also prepared to make special investigations of likely agents for the manufacturer. This information is available to all members of the Association.[8] The American Manufacturers' Export Association renders much the same service to their members.[9] The Foreign Credit Interchange Bureau of the National Association of Credit Men and the American Manufacturers' Foreign Credit Insurance Exchange give valuable credit information on foreign accounts to their members.

A number of export journals having a large foreign circulation also have facilities for giving manufacturers information on foreign agents. Among these are the *International Trade Developer, Inc.*, *Ingenieria International*, *Exporters and Importers Journal*, and *Electricidad en America*.[10] The completeness of their data varies from merely the representations held by the agent to a complete file of commercial—including credit—data along with special investigations of prospective agents. The export trade journals confine their efforts to houses handling the particular lines covered by their publications. Such services are usually free to their advertisers.

One of the most important sources of credit information on prospective foreign agents is the larger banks interested in financing foreign trade. They compile lists of foreign agents containing highly valuable credit data on them as well as other information. Some information on prospective agents can be obtained from foreign trade directories, such as Kelly's Directory or the *Exporter's Encyclopedia*. The reporting agencies, Dunn and Bradstreet, will, of course, furnish credit reports on foreign agents.[11]

Often valuable data on possible foreign agents can be obtained

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[8] Letter received from Mr. Wm. M. Benney, Manager, Foreign Trade Department, National Association of Manufacturers of the U. S. A., dated January 10, 1925.

[9] Letter received from Mr. O. C. Roach, Secretary, American Manufacturers Export Association, dated January 19, 1925.

[10] According to letters received from these journals, January 1925.

[11] For a list of sources of credit information on foreign concerns see "*Sources of Foreign Credit Information*," *Trade Information Bulletin, No. 292, 1924*, U. S. Department of Commerce

from the export executives of other American manufacturing companies, particularly those exporting related lines.[12] Banks and trading companies located in the foreign country for which the agent is to be appointed are at times willing to give information on houses with which they have had dealings.[13] Usually these sources are not, however, readily available to the American manufacturer.

Sifting Foreign Agency Lists

Having obtained a list of foreign agents from the above sources, along with such information as they have of these agents, the manufacturer should proceed to cull the list.[14] By a gradual process of elimination there should remain two or three names of highly desirable foreign houses. It may be that some of the parties furnishing the names of agents have already discarded certain of them because of the fact that the data they had on such names showed that they were obviously unfit for the representation of the manufacturer's product. This is usually done by the Division of Commercial Intelligence of the Bureau of Foreign and Domestic Commerce, which selects from their files three or four of the most promising names and submits only these to the manufacturer. However, most of the general sources of information on foreign agents do not make any preliminary refinement of the lists although they stand ready to assist manufacturers

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[12] "To a newcomer in exporting, from Holyoke, Massachusetts—a man who landed twenty prize agencies ranging in type from retailer to manufacturers' agent abroad in three short months—we must pay our humble respects. All usual methods, however sound, require time and patience, investigation and careful checking. But the Holyoke Method is equally sound. This is to seek out a long-established, closely allied but non-competitive line—one that has been in exporting long enough to have made its agency mistakes and to have rectified them,—and to adopt their entire agency group from Iceland to Ceylon. The two merits of this system are its simplicity and its safeness." From: *Export Merchandising*, Walter F. Wyman, Pp. 333-334.

[13] One instance was cited the writer by an export manager where the manufacturer wrote the large importers of his line of goods asking them to suggest to him desirable houses for handling the agency for his line in their country, listing them in the order of the importer's preference. First, second, third, etc., positions of preference, as given in the replies, were rated say, ten, nine, eight, etc., granted a maximum of ten names on any one reply. These ratings for each suggested house were tabulated, and the one receiving the maximum numerical rating was granted the agency. The manufacturer then wrote the import houses of what had been done, at the same time suggesting that his agent would be pleased to serve them in meeting their requirements in this line.

[14] See H. H. Morse, "*Finding the Prospect*," *Official Report of the Eleventh National Foreign Trade Convention, 1924*, Pp. 124.

in doing so. From what has been already said of the Foreign Trade Bureau of the Philadelphia Commercial Museum it can be seen that they are particularly active in this respect.

Some lists have, however, been subjected to little or no preliminary refinement. Even where this has been attempted the list is likely to contain several obviously undesirable houses; this is true because the party furnishing the data can not hope to understand all the aspects of the manufacturer's agency problems. It may be that they do not have sufficient capital to handle the line, or perhaps they are in a trade group, such as the retail group, which would close two-thirds of the trade to their approach, or the prospect may already be handling a competitive line of goods, or lack certain special services required by the manufacturer, such as manufacturing or guaranteeing accounts.

The remaining possibilities must then be studied carefully and eliminated or put into a deferred class, one by one, as the analysis of the data continues. The final refinement of the list should be done with the assistance of the credit manager, or export credit manager, if there be one.[15] While the export manager should be able to judge the selling capacities and limitations of the names before him, he is not trained in the study of the financial conditions of concerns. This is the credit man's specialty.

The main factors to be considered in sifting a list of agents are the agent's character, his ability, his financial status, his reputation and standing with the trade, the lines he handles, his sales policy, where he is located, what trade group he belongs to, his nationality, and his political influence. All of these considerations must not only be analyzed form the point of view of the present but also of the future. Admittedly this is difficult, and in many cases the data on the agent are too meagre to permit of any very definite conclusions as to what the future is likely to bring forth in these respects. However, any information on the agent's past which might indicate an unfavorable future should be followed up by further investigation.

The character of the agent is a primary consideration in selecting an agent. The relationship of manufacturer to agent is in

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[15] See *Export Merchandising*, Walter F. Wyman, Pp. 331-332.

the last analysis one of "trust." The agent's inherent capacity, his favorable trade standing and every other good qualification he has is brought to naught where an agent chooses to tie up a line, or offer rebates, or accept two commissions, or speculate with the manufacturer's goods at the latter's expense, or misappropriate advertising and other funds and allowances; or where he simply refuses to live up to the spirit of the agreement by failing to apply his initiative and intelligence.[16]

The essential purpose of entering foreign markets is to increase profits. The manufacturer cannot hope to accomplish this without an agent who is competent to prosecute sales for him. The agent must have a thorough knowledge of his market. He must have selling capacity.[17] That is to say, he must have the requisite sales organization to handle the product. This may require branch offices at certain points in the territory. Some commodities call for expert technicians on the staff of the agent. The agent may need to have extensive service facilities, or at least, be able to create and maintain such. He may be compelled to provide special warehouse and storage facilities. It may be necessary for him to be able to provide for demonstration of the goods, putting up window displays, arranging for advertising campaigns, or house-to-house canvassing and distribution of samples. The product may require of the agent a separate department to specialize in handling this one commodity. Where intensive selling of year-around goods is necessary the agent must have a staff which is able to cover outlying regions at very frequent intervals throughout the year.

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[16] See A. J. Wolfe, "*The Legal Aspects of Foreign Agency Contracts*," *Export Trade*, January 28, 1922; M. H. Esser, "*Agency Arrangements in Foreign Trade*," *Export Trade and Finance*, May 17, 1923, Pp. 7.

For examples of fraudulent and dishonest practices upon the part of foreign agents see "*Trade Tricks That Hurt Our Export Trade with South America*," *Current Opinion*, July 1920; Consul Marshall M. Vance, Colombo, Ceylon, "*Ceylon Method of Purchasing Imported Commodities*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, October 8, 1923; A. L. White, "*American Goods Sold Outside America by Americans*," *Export Trade*, September 23, 1922; A. J. Wolfe, "*Seventeen Foreign Trade Disputes*," (Case No. 9) *Export Trade and Finance*, July 28, 1923; *Export Merchandising*, Walter F. Wyman, Pp. 389-91.

[17] See O. Knowlton, "*How to Appoint Agents for Belgium After the War*," *American Machinist*, July 26, 1917; Charles Beaver, "*Direct Selling in Europe—Larger Nations*," *Official Report of the Sixth National Foreign Trade Convention, 1919*, Pp. 382; Remarks on the subject "*Co-operating With Dealers*," *Official Report of Ninth National Foreign Trade Convention, 1922*, Pp. 497-498.

The financial status of the agent should be carefully scrutinized when sifting the agency possibilities. Unless the agent is in good financial condition, and bids fair to remain so, he is a very uncertain link in the foreign distribution chain.[18] Insolvency or bankruptcy may wipe him out of existence at any time. Where the agent is expected to purchase from the manufacturer and particularly where, in such instances, the individual units represent a considerable investment and must be kept in stock in fair quantities, the financial resources of the agent must be considerable. Otherwise, he cannot adequately handle the line. Furthermore, here the accounts of the manufacturer are all with the agent. It concentrates the former's risks in one party and thus increases the risk. Not only must the agent have adequate financial resources for normal times, but his ability to meet the problems of business depressions and financial crises must also be considered.[19]

The personal element—the human equation—figures largely in foreign business as well as domestic. The manufacturer should analyze his list of agents with respect to their trade standing and contacts.[20] Certain houses are especially well thought of by the trade. They have, through past services built up a valuable good-will amongst their clientele. Their reputation may stand far and away above their nearest competitor's. On the other hand, some foreign houses are not regarded with favor by the market. It may be a new house subject to the trade prejudice against the parvenu. Perhaps the trade has found that the house indulges in sharp business practices and is quick to take advantage of its clientele for the sake of immediate profit. The house may have a good reputation for second quality or cheap products, but have no standing at all as a "quality" house. Much also depends upon the social status of the owners

[18] See Francisco Villanueva, "*Appointing an Agent in the Philippines*," *Export Trade*, July 17, 1920; A. J. Wolfe, "*Don'ts in Foreign Agency Agreements*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 21, 1924.

[19] See Paul Auriol, "*Appointing Machine-Tool Agents in France*," *American Machinist* July 11, 1918.

[20] See Charles Beaver, "*Direct Selling in Europe—Larger Nations*," *Official Report of Sixth National Foreign Trade Convention, 1919*, Pp. 384; Axel H. Oxholm, "*Selection of Foreign Agents*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 29, 1923.

of the foreign house. Should they be *persona non grata* socially this is bound to weaken their standing with certain of the trade.

Due consideration should also be given to the lines already being handled by the prospective agents. As a rule it is undesirable to appoint an agent who handles a competitive product.[21] Some foreign houses have, moreover, over-extended themselves by taking on too many, or too great a variety of lines. As a result they are unable to give any one of the representations its proper attention.[22] Such agents should be avoided. Certain foreign houses hold only a reasonable number of agencies and are in a position to take care of additional ones. They, at the same time, however, concentrate on a certain group of products and the remaining lines are only of secondary importance to them.[23] Should the manufacturer's product be among this latter group he would do well to look elsewhere for an agent. Other foreign concerns handle only a small group of related products or perhaps but one line of goods. Such specialization in selling is often highly desirable and makes for more effective agency representation. This is especially true in mechanical lines and lines requiring intensive salesmanship. Some products, as farm machinery, can not be easily introduced into foreign markets unless the agent be handling other related lines.[24]

The manufacturer has no doubt built up certain traditions regarding the selling of his products. He has certain distribution "beliefs."[25] Is the prospective agent reported as being highly progressive—a "live-wire" organization? Or are they termed a conservative house? Are they a young or old concern? What does the data show about the personality of the heads of the firm? Do they make use of advertising, novel sales methods,

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[21] See H. H. Morse, "*Finding the Prospect*," *Official Report of Eleventh National Foreign Trade Convention, 1924*, Pp. 125.

[22] See James W. Hook, "*The Stabilizing Effect on American Industry of a Definite Foreign Trade Policy*," *Official Report of Sixth National Foreign Trade Convention, 1919*, Pp. 86.

[23] See P. J. Stevenson, "*Tractorizing South Africa*," *Export Trade*, January 14, 1922.

[24] See Chapter II, Foot-note (23), Pp. 30.

[25] Ernst B. Filsinger, Export Manager, Lawrence and Co., in an article entitled "*Manufacturer's Agent or Merchant Distributor*," *Export Trade and Finance*, May 12, 1923, says "The human equation is an immensely important factor in all sales arrangements. . . . Individual ability and initiative should be given far greater cosideration than they are often accorded."

etc? These and many other pertinent statements may give some clue to the sales temperament of the agent. If it is in harmony with that of the manufacturer there will be little danger of splitting upon fundamental issues.

The location of the agent is a factor of importance in sifting the agency list. It is desirable that he be so located that he can readily render assistance in receiving shipments from the United States. Location at certain points may incur the necessity of transhipment of goods, as in the case of an agent located at Liverpool and selling from stock in Ireland necessitating cross-channel transhipment of the goods.[26] He should be situated at a point which has the most adequate transportation facilities with the remainder of the territory. In the case of Colombia, for instance, exporters of cotton textiles have found that an agent located at Baranquilla can not adequately cover the entire country due to poor transportation and communication facilities, and hence additional agents have been placed at Medellin, Bogota, Cali, Cucuta and Manizales. At times certain cities are the chief trade centers for the commodity in question and buyers regularly come to this market from outlying regions to do their buying. In such case, he should preferably be located in this city.[27] Location at a free port, such as Hamburg, may be advantageous. The geographical characteristics of the country may limit absolutely the territory which can be handled from any certain point.[28] The agent's location thus in part determines the size of the territory that may with reason be granted him. Where retail houses are used as agents it may be highly important that they be located within a certain very restricted area of a city.[29] This is true of London with its well-defined retail areas.

As is the case within the United States, foreign distribution

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[26] See Consul Henry P. Starrett, Belfast, Ireland, "*Marketing Methods in Northern Ireland*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, March 31, 1924.

[27] See O. Knowlton, "*How to Appoint Agents for Belgium After the War*," *American Machinist*, July 26, 1917.

[28] See Ernst B. Filsinger, "*Some Features of the South American Market*," *Official Report of Tenth National Foreign Trade Convention, 1923*, Pp. 190; P. J. Stevenson, "*Tractorizing South Africa*," *Export Trade*, January 14, 1922.

[29] See Charles E. Lyon, Trade Commissioner, London, England, "*Retail Store Location in London*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 7, 1924.

systems exhibit more or less definite trade cleavages between the various middlemen involved. There is usually a wholesale middleman group and a retail middleman group. In certain countries hybrid wholesale-retail houses are prevalent. In many other countries pure importing houses exist as a distinct and separate group. This makes it imperative for the manufacturer to determine the trade group to which the agent actually belongs. This is not easy to determine because foreign houses at times hold themselves out as being importers or wholesalers where as a matter of fact the trade does not recognize them as such.[30] Should the agency be granted to a retail house, other retailers, and all wholesalers may refuse to deal with the agent because they feel they are entitled to the same prices granted the agent, or better, according as they are retailers or wholesalers. The same principle holds true where a wholesale firm is given the representation. Other wholesalers are loath to buy of or through them.[31]

The nationality of the agent must likewise be considered. This factor bears upon the problem of adequate representation in two ways; first, the attitude of the agent toward the manufacturer, and secondly, the attitude of the trade toward the agent. The fact that English, German, French or Dutch houses have proven satisfactory to exporters of those respective countries does not necessarily guarantee the American manufacturer adequate representation. There are many exporters who sincerely believe that there is little hope of getting such foreign houses to stand behind American goods and push them with all their energy and skill.[32] They believe that their national sympathies

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[30] See A. J. Wolfe, "*Selling Machinery and Steel in Russia*," *Iron Age*, June 29, 1916; Francisco Villanueva, "*Appointing an Agent in the Philippines*," *Export Trade*, July 17, 1920.

[31] See E. B. Filsinger, "*Manufacturer's Agent or Merchant Distributor?*", *Export Trade and Finance*, May 12, 1923; "*Agency Contracts in Foreign Trade*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, February 6, 1922.

[32] See Captain Robert Dollar, "*Suggestions How to Obtain Foreign Trade*," *Official Report of First National Foreign Trade Convention, 1914*, Pp. 100; Leonard S. Smith, "*Some Foreign Trade Problems and Suggestions for Their Solution*," *Official Report of Fifth National Foreign Trade Convention, 1918*, Pp. 457; Paul Auriol, "*Appointing Machine-Tool Agents in France*," *American Machinist*, July 11, 1918; Editorials, "*The Problem of Effective Representation Abroad*," "*The Men Behind the Sales*," "*New Agency Arrangements Needed in Czechoslovakia*," "*Agent's Nationality Affects Business Abroad*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 15, 1923, June 25, 1922, October 22, 1923, and April 28, 1924, respectively; A. L. White, "*Exclusive Agency Contracts*," *Export Trade*, July 16, 1921; "*Americanization of Our Export Outlets*," *Export Trade*, November 4, 1922.

are bound to cause them to give only half-hearted support to American manufacturers, or, at least, that the danger of this is so great as to make it not worthwhile risking an agency with them. But it is certainly true that there are numerous instances where American manufacturers are receiving the very best representation from foreign houses. The fact that a house is English or German is no more conclusive proof of its unfitness for the agency than is the fact that a house is American conclusive proof that it is fit for the agency.[33] Much depends upon the individual house. However, it is no doubt advisable to check up the records of foreign houses thoroughly in this matter.

With regard to the second part of the problem, it is maintained that in certain markets and lines the trade is prejudiced against agents of a third country and will not buy from them when they can get what they want from other houses, whether native or American.[34] The reality of such a situation should be definitely determined.

Where government business forms an important part of sales the political influence of the house becomes an important element in selecting the agent.

In certain instances the data at hand on the agent are very favorable but are so meagre as to make it impossible to get a satisfactory idea of the agent. It is well to put these names apart for the time being and endeavor later on to obtain such additional information as may be desired.

From what has been said above it should be quite apparent that the importance of any one of the factors mentioned will vary according to the peculiar circumstances of the manufacturer, the nature of the product, and the complexion of the market.

Final Selection of the Foreign Agent

It may well be that this refining process will narrow the choice down to one house. At times some brother exporter, or a bank,

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[33] See *Practical Exporting*, B. Olney Hough, Pp. 339; P. S. Steenstrup, "*Direct Selling in South America*," *Official Report of Sixth National Foreign Trade Convention, 1919*, Pp. 415.

[34] See Urbain Van Wymeersch, "*Appointing Agents for Belgium*," *American Machinist*, November 22, 1917; Editorial, "*The Representative's Nationality*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Dept. of Commerce, March 17, 1924.

or one of the sources of information mentioned above recommend at the start one certain foreign house which the manufacturer finds at once to be a very desirable one, in which case much of the trouble of sifting through lists may be avoided. However, no prospect should be appointed as agent where the information regarding him is merely neutral. It should be of a positive, highly favorable nature. In any case, where the one best house is already located the manufacturer can proceed to approach it with his proposition. Where two or three houses, of very similar qualifications, remain after the elimination process all possible additional data on them should be obtained. The information which he already has about them should be checked by other independent sources of information. This will usually give one of the few remaining houses an advantage over all the others. The manufacturer is then ready to approach this foreign house with his agency proposition. Should he fail to sign up this house he can turn to the next best house.

IV

SELLING THE AGENCY

The Proper Attitude of Mind in Selling the Agency

Having selected the agent he desires it is necessary for the manufacturer to put the proposition before him. This involves getting the agent to accept the agency. The success of the manufacturer in selling the agency will depend much upon the attitude of mind in which he approaches the prospective agent.[1] It must be sincere. Nothing can be gained by trying to deceive. The prospective agent will find the manufacturer out sooner or later. "We should be sincere, our real selves in all we say and do."[2] The manufacturer must show a sympathetic understanding of the agent's position and his problems.[3] This is bound to gain the respect of the prospect. He finds the manufacturer has given thought to both sides of the problem and from then on it becomes a matter of discussing *our* problem, rather than *your* problem and *my* problem. The manufacturer must be conservative in his statements. The solid facts, clearly and forcefully presented, with a sense of delicate restraint go further than any amount of superlatives and boastfulness. At the same time a spirit of fairness must guide his every word and action.[4] Once the prospective agent sees that he can count on the manufacturer meeting him half-way in all matters, many of the obstacles which he finds standing in the way of his acceptance of the representation lose half, if not all, their potency. The proposition should be presented to the agent in a courteous and friendly manner, with a tone of keen appreciation of the agent's patronage.

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[1] See D. W. Fernhout, "*Closing the Sale*," *Official Report of Eleventh National Foreign Trade Convention, 1924*, Pp. 131.

[2] *Ibid*, Pp. 132.

[3] See Robert Alter, "*Foreign Selling Agencies*," *American Machinist*, May 15, 1919.

[4] See A. J. Wolfe, "*'Don'ts' in Foreign Agency Agreements*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, Jan. 21, 1924, Pp. 152.

Methods of Approaching the Selected Prospect

There are two general methods of approaching the agent. One is through such impersonal methods as the mail or some third party outside the manufacturer's organization and unknown to the agent. The other means of approach is through having a person connected with the manufacturer's organization and duly authorized to grant the agency personally present the proposition to the agent. The manufacturer might write the agent outlining the essentials of his proposition. If so, the letter should contain at least a brief description of the manufacturer's business, a statement of the nature of the products accompanied by complete descriptive literature of them, and some mention of why the agent is offered the agency, what his territory would be, and what the market possibilities of the product are.[5] This letter should be merely a "feeler" calling for a reply from the agent as to whether or not he is interested. If he is, and there is every likelihood of obtaining his services, a letter containing the complete details of the agency agreement should be dispatched at once for his acceptance. He may make counter-proposals which would cause further negotiations until at last a mutually satisfactory agency agreement is determined upon by both parties. Where there is considerable doubt as to whether the prospective agent will actually accept the agency it might be better to omit price lists from the manufacturer's reply, awaiting the second response from the agent which should give the manufacturer a better line on the seriousness of the prospect's intentions and the probability of getting him to accept, for it is undesirable to have such competitive information disclosed to outsiders.[6]

In some few instances, manufacturers have been known to entrust the entire appointment of an agent to a friend who happens to be visiting, or contemplates visiting the country where an agent is wanted. It is also possible for the manufacturer to

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[5] Editorial, "*Considering the Foreign Point of View*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, May 12, 1924.

[6] This procedure was followed in an agency letter covering the representation for pumps, tanks, and filters submitted to the writer.

permit the personal representative of some export agency such as the National Association of Manufacturers, the Commercial Museum of Philadelphia, the American Manufacturers' Export Association or the International Trade Developer, Inc., to present the proposition to the prospective agent.[7] This would appear to be a rather satisfactory and inexpensive method particularly suitable for the manufacturer whose export business is comparatively small.[8]

Many times the prospective agent is approached in person by some member of the manufacturer's organization,—the president or some other high official, the export manager, or a salesman.[9] Regardless of who makes the visit to the agent, two ways of personal approach may be used. The advisability of their use varies with circumstances. One may be termed the direct method. Here the proposition is put squarely before the prospect for his acceptance.[10] It may be, however, that the information which the manufacturer has on the prospective agent is not conclusive and that there is yet some doubt in his mind whether he represents the type of agent desired. Obviously, it would not be discreet in such case to offer the agency outright in just so many words. Should the agent accept at once, and subsequent negotiation prove him undesirable, the manufacturer would have difficulty in backing out of the arrangement.

Under such circumstances it is better to approach the prospective agent in an indirect way by asking his assistance in locating a proper agent.[11] This can be most readily done where an introduction through a mutual business friend has been obtained.

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[7] Letters received from Mr. Wm. M. Benney, Manager, Foreign Trade Department, National Association of Manufacturers of U. S. A., dated January 10, 1925; Mr. D. C. Roach, Secretary, American Manufacturers Export Association, dated January 19, 1925, and Mr. Walter Marvin, Manager, International Trade Developer, Inc.; also, statement by Mr. George C. Gibson, Assistant Chief of Foreign Trade Bureau, Philadelphia Commercial Museum.

[8] Other impersonal methods of approach, involving no preliminary investigation and selection of prospects, have been effected through advertising in foreign trade journals, and other foreign advertising media, or by sending out form letters to a list of foreign houses. However, such methods are not generally considered good. Their indiscriminate appeal cheapens the representation in the eyes of the foreign houses, usually calling forth inquiries from only the less desirable concerns.

[9] See Charles E. Jennings, "*Building Quality Markets Abroad*," *System*, May, 1920.

[10] See D. W. Fernhout, "*Closing the Sale*," *Official Report of Eleventh National Foreign Trade Convention, 1924*, Pp. 132.

[11] *Ibid.*

Without this the manufacturer may assume such liberty by pleading the high standing of the foreign house. The whole proposition of the manufacturer is then outlined to the agent in such a manner that he can not help but see that he, himself, fits the case exactly. It is a nice way to compliment the prospective agent. It puts him in a receptive mood. At the same time, during the negotiations, the manufacturer is at any time free to withdraw tactfully without embarrassment to himself.

The personal method of approach humanizes the negotiations by injecting the element of flesh and blood into them. It also permits the manufacturer to get an intimate, first-hand knowledge of the prospective agent, his position in the market, his selling problems, and his idiosyncrasies, all of which can be turned to profitable end in making possible a better agreement between the parties.[12] It also affords the manufacturer greater flexibility in presenting the case as it can be adapted to the characteristics of the agent as they are revealed during the conversation. Furthermore, all negotiations and transactions, subsequent to signing up the agent can be given a decidedly pleasing personal intimacy which should greatly enhance their value. The advantage of the impersonal approach lies primarily in the fact that it is less expensive. To send a personal representative abroad to negotiate with agents usually involves the expenditure of a considerable sum of money. The possible volume of business may not justify this.[13] In such instances, the approach must necessarily be by letter, or perhaps cable.

Selling Arguments of the Agency Proposition

Having determined upon the method of approach it is necessary to marshal the sales arguments in an effective manner. This implies a determination of what the manufacturer has to offer the prospective agent as an inducement to accept the representation,[14] what he expects of the likely agent and what

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[12] Letter received from W. E. Hausheer, Manager, Foreign Department, the Pepsodent Co., Chicago, Illinois, dated June 18, 1924.

[13] "*Manufacturers' Agents in South Africa,*" *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, November 13, 1922.

[14] See "*Course In Foreign Trade,*" *Business Training Corporation*, Chapter IV, Pp. 37.

the weak points of his proposition are. Having assured himself that his proposition as a whole and in all its individual aspects exhibits a nice balance of compensations for both parties, the manufacturer can lay out his scheme of sales arguments with a full knowledge of their value and effectiveness.

The manufacturer should first sell his organization to the agent. The fact that the manufacturer enjoys an enviable national reputation at home is often not known to foreign houses, nor does the manufacturer *ipso facto* inherit a like position in foreign markets. He must acquaint the prospect with the facts regarding his house. Its position in the industry at home and its history and progress since its establishment should be mentioned. The financial strength of the company gives the prospect an idea of its substantiality. It is even suggested that a balance sheet might be submitted to the prospective agent. The status of his manufacturing facilities and the plant capacity will show the prospect that the manufacturer is in a position to take care of export orders at all times. At this point any special efforts used to safeguard continuous production such as fire protection, multiple manufacturing units, and satisfactory labor arrangements might well be pointed out to the prospect. The experience and success of the manufacturer in other foreign markets will place the manufacturer in a favorable light. The prospect should be told how the manufacturer has organized for handling and furthering his export business, and what special facilities or arrangements he may have for the careful, intelligent and expeditious handling of export trade.[15] It is always well to submit references to the prospective agent, such as credit agencies, banks, recognized manufacturers' associations, other well-known business houses. A good prospect will be as anxious to learn all he can about the manufacturer, as will be the latter to learn all he can about the former. He is entitled to such information.

The product must then be sold to the agent. The procedure here, as well as the sales arguments, would vary with the nature of the goods. In any event, it is well to inform the prospect

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[15] "*Let the Foreign Buyer Know*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, April 21, 1924.

fully of the basic qualities of the product, what needs it fulfills and how efficient it is in fulfilling them. If such a product has never been sold in this market before it will be necessary to show the prospective agent why they should prove saleable and what their market possibilities are. Should similar products be already on the foreign market, and the prospect be quite familiar with them, the manufacturer should then stress those characteristics of his product which represent an improvement or superiority over competing lines. It may be that the product has a price advantage over its competitors. Where the product has no advantage over its competitors the appeal can be based upon superior merchandising methods. The packaging may be especially attractive, the channels of distribution which are used may be more effective, the make-up of the merchandising unit may be more attractive, the use of advertising, sales letters, samples, window displays, etc., may be novel or superior in their appeal. Even where the line is new to the market it is well to stress the high points of the plan of merchandising contemplated. Some manufacturers may be able to plead both a superior product and a superior merchandising scheme. The product may, furthermore, be complementary to lines already handled by the prospective agent and may thus strengthen his competitive position in the market.

Today the manufacturer of most lines other than staples finds it necessary to render a good deal of service along with the sale of his goods in foreign markets. The foreign agent appreciates such service as it helps him to swell the volume of business he does, and makes for a more contented clientele. It is desirable to "sell" the service to the prospective agent for two reasons. First, he is thus acquainted with the variety of ways in which the manufacturer stands ready to co-operate with him in stimulating sales. Secondly, he is sold on these service schemes, and thus the manufacturer is in turn assured of the prospect's co-operation with him which is so necessary to the effective use of such service facilities. Many of the various ways of cooperating with the agent described in Chapter XII are primarily service features. These should be explained to the agent. Their effectiveness at home, and perhaps in other foreign markets, or as

used in the same market for similar classes of goods should be brought home to the prospect.

The manufacturer's general policies, if they are sound and fair, should go far toward inducing the prospective agent to accept the representation. They should be fully explained to the agent, for any important matter of policy not covered at this point may well become a matter of misunderstanding and contention later on and nullify much of the good feeling and confidence of the agent which has only been won after much studied cultivation. Among such matters of policy there would be the duration of the prospect's franchise, the nature of the grant of agency, terms of sale, amount of commissions, protection of the agent, both price protection and indirect sales protection, direct sales by manufacturer, price fixing, allowances under warranties, price changes, sales quotas, and the like. Such an explanation should not jeopardize the prospect of signing up the agent-to-be. On the contrary it should win him over. Given a sound and logical proposition his fears and objections, if any, should be easily dispelled with the logical reasoning upon which the proposition has been constructed.

The entire sales attack, as outlined above, should center about this one proposition: The prospect must be shown that the agency offers reasonable opportunities for substantial profits. Otherwise the effort is misdirected and will likely prove abortive.[16]

This procedure should be followed whether the selection is made through personal or impersonal methods. In the latter case, however, its use is subject to the limitations pointed out when discussing this method in a previous paragraph of this chapter.

The manufacturer should be careful, however, not to oversell his proposition.

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[16] For a good discussion of the problem of selling the agency proposition see D. W. Fernhout, "*Closing the Sale*," *Official Report of the Eleventh National Foreign Trade Convention, 1924*, from which many of the ideas presented here were taken.

V

FOREIGN AGENCY CONTRACTS—GENERAL CONSIDERATIONS

The Place of the Written Agency Contract

There are two schools of thought on the agency contract. One group of exporters look upon the written agency contract as a matter of minor importance. They consider a formal written contract in most instances wholly superfluous. To their mind a few lines by letter appointing the foreign house as agent, stating his territory and commissions suffices.[1] Other agency matters can be settled by correspondence as they arise. This school believes that the problem of successfully using the foreign agency method lies practically entirely in the matter of the proper selection of the agent. The other school is quite ready to recognize the primal importance of carefully selecting the agent. They hold that even with the very best agent it is desirable to draw up a written contract or agreement embodying the essential conditions of the agency.[2] Nor do they deem it necessary that the document be a formal, printed contract, filled with legal verbiage. They do maintain, however, that in all ordinary instances a written agreement covering the important rights, duties and liabilities of the respective parties, should be signed by both parties.

This raises the question whether it is advisable to have a written contract containing the essential agency conditions drawn up. It is difficult to generalize on any aspects of the agency problem, including this one. It is certainly true that some manufacturers have obtained unsurpassed success with agents with whom they have never had anything more than a mere verbal

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[1] Instances of such beliefs and practices were evidenced in confidential letters sent to the writer by several export managers of large manufacturing concerns.

[2] See *"Agency Contracts in Foreign Trade," Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, February 6, 1922; *Practical Exporting*, B. Olney Hough, Pp. 345.

understanding. But one cannot argue from this that written contracts are therefore superfluous and undesirable. There are agents who have constitutional objections to signing such contracts, while at the same time they are the very best houses available. It may well be best to comply with their wishes and rest content with a mere oral arrangement. It is just as true, however, that there are a number of foreign agents who demand a written contract of the manufacturer. Those manufacturers who have merely verbal understandings with their foreign agents, have usually been long in the export field and have the very best of the foreign houses. Those who have begun their agency relations with a mere line or so by letter appointing the agent, stating the commissions or discount, and defining the territory have built up by correspondence covering agency problems which subsequently arose a rather comprehensive written agreement. Many of the manufacturers of the United States entering into foreign agency relationships today are using a written contract of some kind or other. The trend is in this direction. One may inquire then into the considerations which make a written contract advisable.

The drawing up and signing of a written contract embodying the fundamentals of the agency arrangement at the time the agency is granted will avoid misunderstandings and hard feelings later on.[3] It has been previously said that in every case the essential conditions of the agency should be fully explained to the prospective agent. This is seldom done where the appointment of the agent is done orally or by an abbreviated letter. Where the written contract is used this *must* be done. It is important, moreover, that the agent be fully acquainted with the essentials of the agency arrangement. If he is not, at some later date a *fundamental* issue is likely to arise upon which the manufacturer and the agent have quite opposed ideas. No mention of the situation having been made when the agency was granted, the manufacturer has proceeded on the assumption that his opinion on the matter would hold. The agent has done likewise. Their positions are confirmed in their own minds as

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[3] See A. J. Wolfe, "*The Legal Aspects of Foreign Agency Agreements*," *Export Trade*, January 28, 1922.

time elapses and then when some incident brings the matter to an issue, it becomes an exceedingly difficult problem to settle amicably. Had it been discussed along with the other conditions of the agency, at the time they were being settled, this problem would no doubt have been easily solved. But the question might be asked whether a written contract is not, nevertheless, unnecessary just so long as the matters have been fully agreed upon verbally by the parties at the time of appointing the agent. The trouble here is that there is no tangible, black-on-white evidence of exactly what was agreed upon, and what was the nature of the agreement of the parties. Either party may fairly believe that certain matters of the agency had been discussed and settled while the other party may, with equal conviction, hold to the contrary.

Where the business relations between the manufacturer and the agent are such as to cause the agent to be responsible to the manufacturer for large sums of money there is every reason why the latter should protect these credits through the execution of a legal and enforceable contract covering such matters.[4] The best and strongest agents are not failure-proof. Speculation by persons employed by the house or severe business crises may ruin the best house. In such cases, the manufacturer should be protected against huge losses that may result from merging his property with other general assets in the hands of the agent for distribution among the creditors, and other such contingencies. Nor would any fair-minded agent object to this. He would do likewise were he in the manufacturer's place.

The agency relationship involves many points which concern the rights and liabilities of third parties, as well as those of the manufacturer and the agent.[5] The agent deals with third parties —his customers and others—and in such dealings he may under the law of his country bind his principal, the manufacturer.[6]

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[4] As illustrative of the necessity of protecting such property values see, "*Consignment Laws in India*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, April 16, 1923.

[5] See, "*Agency Contracts in Foreign Trade*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, February 6, 1922; Consul Leslie A. Davis, "*Consignment Laws in Finland*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, April 9, 1923.

[6] See Page 10.

The manufacturer can best guard against such possibilities by drawing up a careful contract at the time of appointment of the agent defining exactly the nature of this appointment and the powers of the agent. Such a written agreement, while it does not absolutely insure against liabilities to third parties being thrust upon the manufacturer, nevertheless, enables him to prevent such occurrences in large part by clearly evidencing the exact status of the agent both to the agent himself, and to third parties and the courts.

Furthermore, agents find it quite necessary to have a comprehensive written agency contract where they need to use the agency franchise as loan collateral in securing financial backing to put over the agency.[7] The banks are not content with a mere oral assertion of fact that the agency is held, or with a letter merely stating the agent is so appointed. They want and demand to know the details of the agency arrangement.

Where agency arrangements are handled for the manufacturer by his export manager—and this is quite usual—the possibility of a change in export managers may put the manufacturer in an embarrassing position if no definite written record of the agency agreements between himself and his foreign agents is had. The manufacturer does not know just what he has agreed to do by the agents and what they have agreed to do by him. His new export manager is hopelessly lost. He has no way of knowing just where he stands with the foreign agents. To appeal to the foreign agents for such information would be embarrassing to say the least. To pore over voluminous correspondence and patch up an approximate picture of the agency agreement with each and every foreign agent requires much time and effort.

An agency is sometimes assignable, more often, perhaps, by neglect to provide to the contrary than by specific intent. In either instance, it is well for the manufacturer to have some written evidence of the exact terms of the agency so that he knows what the assignee can hold him for and what he can not.

When government business is solicited, the agent is often

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[7] Letter received from Mr. E. M. Lawton, American Consul-General in Charge. Sydney, Australia, dated June 12, 1924.

required to show a written agency authorization. In some countries, such as Italy, the agent is legally required to produce an agency contract upon demand of any third party demanding the same in good faith.[8]

The Purpose of the Agency Contract

The purpose of the agency contract, put concisely, is to present in writing a complete and clear definition of the rights, duties, and liabilities assumed by the manufacturer and the agent for mutual profit and, thereby, to promote sales.

The General Characteristics of a Good Agency Contract

There are certain general characteristics exhibited by any good agency contract drawn up with this purpose clearly in mind. Any agency contract which purports to be an effective one must be strictly fair and equitable.[10] For instance, one manufacturer of tires not so long ago insisted upon a clause in the agency contract requiring the prospective agent to place a trial order for five thousand dollars, cash against documents and a guaranteed yearly purchase of twenty-five thousand dollars. Since the agent's territory—Madeira, Spain—contained only about one hundred and fifty automobiles in use the clause was obviously unjust, if not ridiculous.

The contract must also be complete in every respect. This characteristic needs no further elaboration here as it was discussed in a previous paragraph. Many contracts read by the writer failed to mention when commissions would pass, or on what price basis commissions would be calculated, or whether the agent would be protected against indirect and direct sales.

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[8] See Consul-General Francis B. Keene, Rome, Italy, "*Consignment Laws of Italy*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, July 30, 1923.

[9] See "*Special Clauses in Export Contracts*," *Export Trade*, November 19, 1921, Pp. 8.

[10] See William G. Marvin, "*Foreign Agency Relations*," *Export Trade and Finance*, June 2, 1923, Pp. 11; Walter F. Wyman, "*Common Defects in Export Agency Contracts*," *Export Trade* December 30, 1922.

The contract must be clear as to its meaning and intent.[11] The clauses should be phrased with exactness. They should accurately represent the views and intent of the parties as expressed and mutually agreed upon by them. A clause granting the agent exclusive rights in Guatemala when only Guatemala City was intended, and not the entire country, puts the manufacturer in an embarrassing position. The manufacturer should also see that his own duties and liabilities are treated as fully and carefully in the contract as those of the agent. Nothing can be lost by this, while at the same time it makes for a more attractive agreement.[12] The contract, in all respects, should be legal.

The Content of Agency Contracts

It is impossible to outline all the essential provisions that should be placed in agency contracts as this will vary radically with the manufacturer, the product, the agent and the market. There are, however, certain basic provisions which are found, in one form or another, in almost all well-drawn contracts. Some of these represent concessions granted and obligations assumed by the manufacturer, others relate to concessions granted and obligations assumed by the agent, and still a third group relate to mutual rights and obligations. Regarding the provisions included in the first class there would be the enabling clause, the territory clause, the duration clause, the compensation clause, and the advertising clause. The contract should fully describe the nature of the agency granted the agent. Is it in every respect an exclusive agency? May the agent carry competing lines? Is he to work purely as a commission agent or a merchant agent, or both? These and other matters go to make up the fundamental character of the representation granted the agent. The territory granted the agent must also be specified in the agreement. Care should be taken to see that this is accurately done. The duration of the grant of agency should be long enough to allow a thorough test of the market and of the

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[11] See, A. L. White, "*Exclusive Agency Contracts*," *Export Trade*, July 16, 1921.

[12] See, Walter F. Wyman, "*Common Defects in Export Agency Contracts*," *Export Trade*, December 30, 1922.

desirability of the agency connection. The agent's compensation should be definitely stated. It may be in the form of salary, commissions, or price concessions (discounts) or combinations of these. Where the manufacturer is ready to carry some of the advertising burden, a definite statement of what he will do should be included. An example of clauses taken from an actual agency contract and covering the above matters is given here. They show how a certain manufacturer has provided in his contract for such matters:

In consideration of the granting by "X" Manufacturing Company of the exclusive agency for sales of its (*products*) in (*territory*), "Y" Importing Company accept this agency, guaranteeing every reasonable effort to promote mutual interests:

The Manufacturers agree:

1. To sell their (*products*) to the Agent at a discount of fifteen per cent from their Export Prices; these prices being f. o. b. steamer, Boston or New York, in lots amounting to not less than $100.00 net, and subject to terms of————————————quoted and payable in Unites States Gold.

2. Not to sell to any other firm in the above mentioned territory without the expressed permission of the Agent, and to refer all such orders and inquiries to the Agent for attention.

3. To credit the Agent with a commission of fifteen per cent on the net amount of all orders accepted by them from the Agent to be shipped and invoiced by the Manufacturers direct to the trade: this commission to be remitted to the Agent as soon as payments are received by the Manufacturers.

4. To co-operate in every possible way in the developing of business in their products in the above mentioned territory, and to furnish free of charge such advertising matter as they may consider necessary. It is agreed that all advertising matter is to be delivered to f. o. b. point as specified in Paragraph one, Page one of the agreement, and that the Manufacturer shall assume no charges beyond this f. o. b. point.

5. To allow the Agent to solicit orders for their products in the above mentioned territory on the basis of terms specified in Paragraph one, Page one, of this agreement, it being clearly understood that the Manufacturers are in all cases to be sole judges of credits, and such orders are to be taken subject to the acceptance of the Manufacturer.

6. To institute an introductory advertising campaign for (*product*) immediately upon the distribution of stocks of (*product*) at important jobbing points throughout the above mentioned territory, as provided for in Paragraph 5a Page 2 of this agreement, this introductory advertising campaign to extend during three spring months of the First Contract Year, and to be followed by similar advertising at intervals and to the extent which they may consider necessary.[13]

The basic provisions covering the agent's concessions and obligations would include a competitive-goods clause, an efforts clause, and an advertising clause. If the agent is to be prohibited from handling any competitive line, this should be inserted in the contract in so many words. Where he is already handling a competitive line he should be given reasonable time to work such stocks of it as he may have off his hands. The efforts clause should state that the agent agrees to use his best efforts to sell the goods and may perhaps even definitely prescribe certain of these. Whatever advertising activities and expenses the agent agrees to assume are also a basic part of every contract. As illustrative of these provisions the following clauses are quoted from an American manufacturer's export agency contract:

The Dealer Agrees:

To use every effort to sell the greatest possible number of (*products*) under this agreement, and to prosecute the business diligently in all reasonable ways; to devote the necessary time to promoting the business and interests of the Company to the satisfaction of the Company.

To employ, instruct and maintain an adequate staff of salesmen and other selling representation to sell ("*X*" *Manufacturing Company's*) (*products*) and devices in quantities consistent with the possibilities of the territory,

[13] Foreign agency contract used by a manufacturer of paints, varnishes and enamels.

and to maintain an (————) training school where necessary and other means of carrying out the Company's policy of assisting the customer to obtain the maximum benefit through the use of the (*products*).

To expend each year in advertising the Company's product, in a manner agreeing with the Company's advertising policy and plans a sum not less than (————) per centum (————) of the total export list price of the ("*X*" *Manufacturing Company's*) (*products*) sold within Dealer's territory during the year immediately preceding.[14]

Certain mutual concessions and obligations form a basic part of every contract. These relate to the cancellation of the contract. They should make clear just what circumstances shall enable either party to cancel the contract, the exact nature of the notice of cancellation that must be given, and how and when cancellation is to become effective. The following clause taken from an export agency contract is to point:

It is understood that either party shall have the privilege of cancelling this entire agreement by giving to the other six months' previous notice in writing, and that during such six months all the terms of this agreement are to be in force.[15]

Along with such basic provisions one frequently finds most of the following: a direct sales clause, an indirect sales clause, an extra-territorial sales clause, a quota clause, a stock clause, a price-change clause, an Act-of-God clause, an approval-of-order clause, an assignability clause, and a jurisdiction clause. The direct sales clause should state the conditions, if any, under which the manufacturer may solicit orders direct from the trade of the agent's territory and what rights and compensation the agent is to have under such circumstances. It may be highly desirable that the manufacturer retain the right to solicit orders and sell direct to the trade. The following is an example of such a clause:

It is mutually agreed that the Corporation shall have the right at any time during the existence of this Agreement to sell direct to any person or cor-

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[14] Foreign agency contract used by a manufacturer of office equipment.

[15] Foreign agency contract used by a manufacturer of inks, adhesives, inked ribbons, and carbon paper.

poration or municipality in such District, any and all models of ("*X*" *Manufacturing Company*) Motor Vehicles handled or dealt in by the Corporation, provided, however, that upon any such models so sold direct, the Distributor shall be paid a commission equal to ten per cent of the United States list price, f. o. b. (*interior point*) in force at time of sale.

The Corporation reserves the right to sell ("*X*" *Manufacturing Company*) Motor Vehicles direct to the Government of any country, except municipal governments, if such Government elects to place such orders direct with the Corporation, rather than place the orders through a Distributor, in which event the Distributor shall not be entitled to receive any discount or commission on such sales.[16]

The indirect sales clause should set forth the protection which the manufacturer agrees to give the agent on sales made by the former to commission houses and other middlemen shipping his products into the agent's territory. An exclusive agency implies exclusive selling rights in the territory of the agent. He therefore usually wants as much protection as possible from sales made in his territory through such third parties. This is only reasonable. One manufacturer has the following clause in his contract relating to this situation:

The Company in consideration of the Agent's aforesaid services agrees to pay to said agent a commission of Ten (10) Per Cent on the amount of all orders taken and forwarded by him and accepted and filled by the Company and paid for by the Customer, and a commission of Five (5) Per Cent on the amount when paid of all other orders received through export houses or other channels for delivery in the territory of (*territory*), so long as this agreement shall remain in force, when shipping directions are furnished.[17]

The extra-territorial sales clause, frequently found in agency contracts, governs the agent's selling the manufacturer's product outside the agent's territory. With certain lines of goods this raises some very fine points of distinction. The clause is illustrated by the following:

The party of the second part agrees not to sell or offer for sale any apparatus or supplies purchased under the terms of this agreement for use in or export

[16] Foreign agency contract used by a manufacturer of motor vehicles.
[17] Foreign agency contract used by a manufacturer of fine rubber goods.

to any other country than in (insert agent's territory) without permission from the International Company.[18]

The quota clause found in many contracts sets certain sales or purchase quotas which the agent is expected to meet. They may be expressed in physical units of the goods or in monetary terms. They may be yearly, semi-annual, "for the season," or some other period of time. They are often on a graduated basis beginning with the first year and increasing thereafter, and subject to change at certain specified times. It is found that by giving the agent a definite goal to work for they stimulate him to greater effort. The establishment of such quotas, however, assumes a rather thorough knowledge of foreign market possibilities. An example of such a clause, where the merchant agent is used, reads as follows:

That in consideration of the exclusive rights herein conferred, the Dealer agrees to place an initial order for not less than (————) (*"A" products*) and (*"X" Manufacturing Company's*) (*"B" products*), together with a proportionate quantity of supplies, and to order and pay for each year not less than (————) (*"A" products*) and (*"X" Manufacturing Company's*) (*"B" products*), together with a proportionate quantity of supplies.[19]

A majority of contracts have some sort of price-change clause. It governs the rights of both parties when price changes are made by the manufacturer, giving greater or less price protection to the agent and his clients, or perhaps no protection whatsoever. In any event, it specifies that the manufacturer has the right to change prices. One manufacturer has provided for this as follows:

The prices of all Machinery, etc., purchased by the Factor from the Company shall be the list prices published by the Company from time to time, subject however, to such discounts as may be established and made current by the Company in accordance with the provisions of this Contract. Prices and discounts will be subject to changes, and such changes will become effective ten days after telegraphic notice of them shall have been sent from the Home Office at ————————, ————————.[20]

[18] Foreign agency contract used by a manufacturer of electrical equipment.
[19] Foreign agency contract used by a manufacturer of typewriters.
[20] Foreign agency contract used by a manufacturer of ice-making and refrigerator machinery.

An Acts-of-God clause is often found in the general run of agency contracts. Its purpose is to exempt the manufacturer from liability for failure to comply with the other terms of the contract or for delay in shipments due to certain enumerated causes. The contents of one such clause is here given:

The Company shall not be liable for delays or failures to make delivery of goods ordered hereunder occasioned by war, fires, the elements, labor troubles, interruption or shortage of transportation facilities, inability to obtain goods, or from any cause beyond the control of the Company.[21]

Most contracts have an approval-of-order clause where the agent is acting solely as a commission agent. The effect of such clauses is to subject the filling of all orders forwarded by the agent to the manufacturer to the prior approval of the manufacturer. The manufacturer can thus control the credit risks which he assumes by virtue of such orders. As illustrative of this we have the following clause:

It is understood that the "X" Manufacturing Company will assume the risk of each account accepted and have the privilege to refuse to fill any order that in their judgment is not worthy of credit.[22]

The assignability clause occurs again and again as one reads over agency contracts. Its growing prevalence is a good sign, for the matter it covers is of much importance. Such clauses state whether the contract is assignable or non-assignable. The writer has found that most of such clauses relate only to the agent's ability to assign the contract. Nothing is said regarding the manufacturer's right of assigning the agreement. No doubt the latter is much less likely to desire to assign the contract. It does no harm, however, to protect the agent likewise by making its provisions cover both parties. An assignability clause is quoted below:

This agreement is not transferable.[23]

Occurring frequently enough to be classed with these usual

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[21] Foreign agency contract used by a manufacturer of automobile tires.
[22] Foreign agency contract used by a manufacturer of collars and shirts.
[23] Foreign agency contract used by a manufacturer of food products.

clauses of the agency contract is the jurisdiction clause. It designates the country whose law shall be followed in all legal questions relating to the contract. When the manufacturer designates an American jurisdiction it affords him additional legal protection in that he knows just what the law on the contract is. Witness the following:

All the provisions hereof shall be construed and given effect according to the laws of the State of Illinois, U. S. A.[24]

Although these clauses are usually found in export agency contracts, the substance of the clauses quoted as examples can not be taken as typical of the provisions of such clauses found in the general run of contracts. They vary radically with each contract. Nor can any general rule be laid down as to what the contents of such clauses should be—for the very reason that individual circumstances vary widely and call for all sorts and shades of treatment.

A great variety of special clauses are now and then found in export agency contracts. While they may be necessary and highly desirable for that particular agency to which they apply, they are, on the whole, quite uncommon. Among matters covered by such clauses would be the following:[25]

1. The keeping of accurate accounts by both parties.

2. The advances the manufacturer shall make and how he is to be reimbursed.

3. The allowances the manufacturer shall grant the agent for defective goods, repairs by agent, etc.

4. The allowances the agent is permitted to grant his customers when trading in second-hand goods of the manufacturer's or some other make.

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[24] Foreign agency contract used by a manufacturer of plows. This clause, and the previous clauses of this chapter, quoted from various foreign agency contracts, should not be considered as typical of all such contracts.

[25] Based upon an examination of the clauses of some one hundred foreign agency contracts being used at the present time by American manufacturers.

5. The provision for arbitration in case of disputes between the agents.

6. The auditing of the agent's accounts.

7. The agent's responsibility for bad debts.

8. The requirement of a bond from the agent.

9. The submission of a buyer's list by the agent to the manufacturer.

10. The presentation of claims for loss and damage by the agent.

11. The collection of drafts, disposal of refused goods, and protecting in general the interests of the manufacturer by the agent.

12. The storing, caring for, and accounting for consigned goods by the agent.

13. The status of translations and copies of the agency contract.

14. The giving of credit and market information by the agent.

15. The cancellation of orders by the agent or his clients.

16. The rendering of specific shipping directions by the agent.

17. The making of direct shipments by the manufacturer.

18. The discontinuance of a line or adding a new line by the manufacturer.

19. The assumption of extra packing, cable, postage, agent's travelling, taxes, license fee, storage, documentary stamp, and bank collection expenses by one party or the other.

20. The handling and safe-keeping of the manufacturer's funds by the agent.

21. The guarantee of goods given by the manufacturer and the representations under this guarantee which the agent can make to customers.

22. The making of improvements of the product by the manufacturer and agent's rights in such cases.

23. The requirement of a certain initial order at the time the agency is granted.

24. The issuance of instructions to agents by the manufacturer and their observance.

25. The effecting of marine insurance on the goods.

26. The submission by both parties of invoices of goods sold.

27. The assumption of liability for loss or damage of goods in transit.

28. The maximum number of units of the product which the manufacturer can be required to supply to the agent during a specified time.

29. The smallest individual shipment which the manufacturer will make.

30. The minimum order which the manufacturer will accept.

31. The modification or alteration of the contract.

32. The granting of prices to the agent as favorable as those granted any other agent operating under similar conditions.

33. The rendering of estimates of future requirements of the goods by the agent; the equal distribution by the latter in placing his order.

34. The use of manufacturer's order forms by the agent; also his letterheads and envelopes.

35. The allocation of orders to the agent by the manufacturer when production is short of demand.

36. The procedure to be followed by the agent when orders are placed by the customer through commission houses.

37. The kind of packing to be used by the manufacturer.

38. The cancellation of other contracts by the signing of the one in question.

39. The rights, duties, and liabilities of both parties upon termination of the contract, regarding repurchasing of products by the manufacturer, and solicitation of manufacturer's clients by the agent.

40. The fixing of wholesale and retail prices of the goods by the manufacturer.

41. The control of special quantity discounts to large buyers.

42. The reports on calls made, sales made, stock-on-hand, and details relating thereto to be made by the agent.

43. The return of goods—not defective—by the agent.

44. The control of advertising.

45. The use of a special representative by the manufacturer to supervise agent's activities on the spot.

46. The service and service facilities to be rendered by the agent, the assumption of such expenses and the charges to customers.

47. The appointment of sub-agents by the direct agent.

48. The provision of a technical expert by the agent for sales promotion work.

49. The registration, use and protection of the manufacturer's trade-mark by the agent.

It is quite impossible to prescribe the desirability and mode of use of clauses covering the above matters for any one manufacturer without knowing conditions surrounding the contemplated agency relationship. The particular adaptability of some of these clauses to the agency conditions met with in certain classes of goods, and to the varying conditions of foreign markets is brought out in later chapters.

Drawing Up the Agency Contract

Having a full knowledge of the conditions that can and should be covered in the agency contract, and in what various ways they can be covered, the manufacturer is in a position to draw up a contract. It should be mentioned at this point that occasionally contracts are drawn up by agents, or agents' associations,

instead of by manufacturers.[26] Such contracts are submitted to the manufacturer for acceptance. In either case, however, the contract as presented by the one party or the other is more or less a basis for further negotiations and subsequent revisions. This is particularly true where the manufacturer experiences competition from others in placing the agency. In any event, it is desirable to draw up a complete preliminary contract. The original drafting should be done by the export manager, by and with the aid and advice of the credit manager, the treasurer and the legal counsel of the company. Each should have a definite contribution to make: the export manager on pure sales problems, the credit man on terms of sale, the treasurer on the credit extensions as they relate to the financial status and policy of the company, and the legal counsel on the legal problems involved.[27] The original draft should then be carefully rechecked by the export manager in detail, and in its entirety as an attractive sales proposition. It is then advisable to submit it to a legal specialist in foreign agency contracts for review.[28]

An agreement thus carefully prepared bids fair to be fundamentally sound. It further brings into sharp delineation a general agency policy. Therefore, regardless of the actual form in which the agreement may be cast for use, it is advisable to construct the contract in much this way. Some manufacturing exporters, however, object to putting the agreement in the form of a formal contract. They would prefer to embody these same clauses in a letter sent to the agent for his signature. Where this is necessary, due to existing competition for the agent or the agent's strong prejudice against formal contracts, there seems to be no reason why the practice should not be followed. A growing number of manufacturers, however, are using the more or less formal contract with much of the formality removed by a simple, cordial phraseology of the clauses.

Once the manufacturer and the prospective agent have agreed upon a contract it can be drawn up in the desired form. It is

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[26] Letter received from firm of Andrews & George Co., Tokio, Japan.

[27] See, A. J. Wolfe, "*Solving Export Problems*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, December 18, 1922.

[28] See, Walter F. Wyman, "*More Defects in Agency Contracts*," *Export Trade*, January 6, 1923.

often necessary to have at least one copy of the contract translated into the language of the agent. The agent will often hesitate to accept only an English copy as frequently he knows little, if anything, of the English language. In such cases the manufacturer can usually protect himself from errors in the translated copy by providing in the contract that the English copy shall control.[29] When the law requires the document to be legalized in order to be enforceable usually several copies of both the English and the foreign language texts will be required.

The procedure to be followed in legalizing or registering agency contracts in foreign countries varies considerably with the particular jurisdiction involved. For Colombia, as representative of South American countries, "such registration is a long and tedious proceeding, involving passage through the hands of a state secretary of state, or the clerk of New York County if there entered into, a Colombian consular officer, the Colombian diplomatic representative, the Secretary of State of the United States, and finally through the proper ministry at Bogota and the hands of a local notary."[30]

An expert legal adviser should be consulted in drawing up the agency contract. He can render valuable assistance on matters relating to its contents, form, and legalization. He is a most efficient means of preventing all sorts of legal difficulties. By consulting such a firm of attorneys the manufacturer is not only put right on legal requirements which he does not understand, but many laws, whose existence he knew nothing of, are brought to his attention, and expert advice as to how to meet these legal situations is given him. Among the important matters upon which expert legal counsel is especially desirable would be:[31]

1. The general law of contracts in the foreign country.
2. The agency law in the foreign country.

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[29] See, William G. Marvin, "*Foreign Agency Relations*," *Export Trade and Finance*, June 2, 1923, Pp. 12; A. J. Wolfe, "*The Legal Aspects of Foreign Agency Agreements*," *Export Trade*, January 28, 1922.

[30] Letter received from Maurice L. Stafford, American Consul, Barranquilla, Colombia, dated June 24, 1924.

[31] Letter received from Mr. Louis V. Bergh of Marvin and Pleasants, dated February 25, 1925.

3. The law concerning consignments.
4. The law regulating the status of foreign corporations and their agencies in foreign countries.
5. The law of negotiable instruments.
6. The law regulating legalization of foreign contracts, including agency contracts, as well as authentication of copies and translations of foreign instruments.
7. Special requirements as to execution and legalization of powers of attorney outside of the foreign country.
8. Arbitration laws.
9. Bankruptcy and insolvency laws.
10. Legal remedies (executory and declaratory actions).
11. Trade-marks and patent laws of the foreign country.
12. Regulation of commercial treaties affecting foreign agencies and corporations, patent and trade-mark rights, etc., in foreign countries.
13. Custom laws and regulations and the license-fee requirements of the foreign country.
14. The tax laws of the foreign country.

All of the above impinge more or less directly upon the agency contract. It is better to be well-advised regarding them at the start and thus avoid trouble, than to be compelled to do so after one has already gotten into difficulties.

The Standardization of Agency Contracts

Much has been and is being accomplished toward the standardization of matters relating to overseas trade. The possibility of making headway in this direction in the case of export agency contracts has been broached now and then.[32] However, nothing has been accomplished by way of one general standardized contract. And there is little hope that any substantial progress

[32] See, A. J. Wolfe, "*Standardizing Agency Agreements*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, January 19, 1925.

toward this end can be made. The agency relationship being such a vitally personal one, the personalities involved varying to such a large extent, the great variety and radical differences in the nature of products sold abroad, and the sharp differences between one foreign market and another make a standard export agency contract for general use impracticable.

Nevertheless, there are fruitful possibilities in the idea. Each individual manufacturer might well have a standard contract covering the most unpromising agency situation, which he might use as a sort of bench mark in constructing the contour of all contracts. It is a valuable check on the contracts being drawn up by the manufacturer. More than this certain provisions which are used will be the same in practically all instances. Such clauses as those exempting the manufacturer from liability for loss or damage resulting from unavoidable delay in shipment, those governing the jurisdiction of the contract, its assignability and so forth, can be fairly well standardized in content and phraseology.[33] It is not beyond the realm of the possible, by any means, that manufacturers exporting the same, or a group of any similar, articles by joint thought and effort might evolve certain valuable standards of practice regarding the contents of agency contracts which would do some real good to the trade, the agents and themselves. But the ideal of one standardized agency contract for all trades and all markets will always remain an ideal, or rather an idea, and a poor and totally impracticable idea at that.[34]

The Revision of the Agency Contract

Once the export agency contract has been carefully drawn up and properly executed and signed the manufacturer must not think that so far as the contract goes, the problem is solved once and for all. The conditions surrounding the agency undergo a

[33] Some individual manufacturers have already adopted a standard contract used by them for all markets, subject, however, to revision and the insertion of special clauses when necessary. See page 101.

[34] "*Course In Foreign Trade*," *Business Training Cooperation*, Vol. V., Pp. 55; Editorial "*Model Conduct Versus Model Contract*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce U. S. Department of Commerce, March 10, 1924; A. L. White, "*Distributor's Contracts*," *Export Trade*, July 9, 1921.

continuous process of change. Certain provisions of the contract become antiquated, others become inadequate, and new matters arise which should be made a matter of written agreement. This requires the manufacturer to periodically check his contract with the course of new agency developments, and revise it accordingly, if this be advisable.[35]

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[35] A. J. Wolfe, "*Solving Export Problems*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, December 18, 1922.

VI

Foreign Agency Contracts—Non-Mechanical Specialties*

Commodities Covered by the Contracts:—Foreign agency contracts now being used by various American manufacturers of non-mechanical specialties have been solicited and received from the manufacturers themselves, and also from American consuls abroad. Thirty-two foreign agency contracts covering non-mechanical specialties were collected. These were studied carefully and an analysis of the clauses was made in each case. The commodities covered by these contracts were pianolas, victrolas, lamps, lanterns, and self-heating irons, optical goods, paints, varnishes, and enamels, inks, adhesives, inked ribbons, and carbon paper, sanitary pads, fine rubber goods, collars, shirts, hosiery, medicinal products, soaps, boots and shoes, razors and razor blades, shade rollers, lubricating oil, home remedies, clocks, toilet articles, suspenders, shoe polish, silver flatware and goggles. For some of these articles two or three contracts of different concerns covering the same product were analyzed. In some instances, two or three of these specialties were covered by one contract, the same manufacturer producing several related lines. In one or two cases, the article was merely specified as an ordinary specialty. This group of contracts, as well as the groups treated in the following chapters, were analyzed with the purpose of presenting their major characteristics and defects.

Organization of the Contract:—A large number of these contracts failed to organize the subject-matter properly. There was no definite ear-marking of the clauses according to content. There was a lack of logical arrangement of the clauses. What is worse, in some instances matters relating to prices, terms of sale, commissions, and others were not treated as a unit in one concise and compact clause but scattered through a number of heterogeneous provisions. Very few of the contracts, indeed, grouped

* See Appendix N.

the clauses under any such captions as "The manufacturer agrees," "The Agent agrees," and "It is mutually agreed." A perusal of the contracts can not fail to convey to the reader a distinct impression of clarity, thoroughness and attractiveness on the part of the well-organized and well-drawn contracts as contrasted with a quite opposite impression of the remainder of such contracts.

Grant of Agency:—This group of contracts appointed a relatively larger number of commission agents than was true of any of the other groups studied. In nearly one-half of the cases the agent sold the goods on a commission basis. The agency was usually granted for but one year, being self-renewing thereafter if satisfactory to both parties. The proportion of contracts running for more than a year was smaller than that of the other groups. In practically no instances was the granting of the agency conditional upon the placement of a certain initial order by the agent.

Direct Sales:—Over half of these contracts failed to make any mention of direct sales. This matter should be covered in all agency agreements. Large purchasers can be solicited many times more effectively by the manufacturer than the agent. Some large importers refuse to deal at all with local agents and insist on buying direct. Moreover, the manufacturer often finds it desirable to send his own salesmen into the foreign territory to sell the trade and do "missionary" work. Where an agent fails to produce results the manufacturer finds it to his advantage to be able to place his own salesmen in the field immediately, rather than being compelled to wait until the contract can be cancelled. For these reasons, it is desirable to insert a clause permitting the manufacturer to sell direct to the trade. However, in such an event, the agent should be allowed a full or split commission on orders so taken. This was regularly done in those agreements permitting the manufacturer to sell direct.

Indirect Sales:—Even fewer contracts contained any mention of sales made in the agent's territory by commission houses. An agent having exclusive selling rights in a given territory has

the right to demand that the manufacturer refrain from permitting others to sell his products in this area so far as this can be reasonably prevented. It is obviously a vital issue to the agent and should be settled in the agency agreement. As a rule, those contracts touching upon this point give the agent full protection on such business where the manufacturer had knowledge of the destination of the goods at the time the order was accepted by paying the agent full commission or discounts. Some few, however, stated that the manufacturer could not be held responsible if goods entered the territory by way of commission houses.

Commissions and Discounts:—All of the contracts provided for the commissions or discounts which the agent was to receive. The amounts of commissions or discounts were eliminated from the contracts the writer received in all but thirteen instances. In the nine contracts in which the amounts of the commissions had been filled in they ranged from five to ten per cent. This percentage was usually based upon the net paid sales. Discounts varied from seven and a half per cent to sixty per cent, and were usually based upon current export list prices. Many contracts failed to state exactly how, when and under what conditions commissions were passed.

Prices:—The contracts invariably made reference to the schedule of prices which were to obtain. Nine actually contained the price quotation, which was, in all but three instances, upon an "F. O. B. New York" or "F. O. B. steamer New York" basis. F. O. B. cars New York, F. A. S. New York, or F. O. B. steamer New York should be used instead of "F. O. B. New York" as this quotation is rather vague. Only one-half of the agreements made further specifications regarding price changes. These were usually to the effect that orders closed by the agent prior to notification being received by him of an advance in price or previous to a set effective date of such prices would be invoiced at the old prices. Where prices were lowered the lower prices were granted on all orders not yet accepted when the price was lowered. Little attempt was made in this group of contracts to control agent's and dealer's resale prices by the manufacturer.

Terms of Sale:—Of the thirty-two contracts eight had the terms of sale clause filled in. Two of these called for cash with order, one gave thirty days from date of invoice, another thirty days' sight, two granted three months from date of invoice, and two ninety days' sight, documents against acceptance. They all specified that payment was to be made in New York funds. There are no typical terms of sale for this group of commodities as a whole. So far as the writer can ascertain, they vary from cash with order to ninety days' sight or one hundred and twenty days from date of invoice. Cash discounts also vary radically as to the time limit of their application, although the amount of such discounts are quite regularly placed at two per cent of the net invoice value.

Advertising:—Advertising matters had a very definite place in this group of foreign agency contracts. Three-fourths of them made some statement as to what the manufacturer and/or the agent was to do regarding advertising. The clauses as a whole were rather general, however, usually little more being said than that the manufacturer would make available to the agent all dealer helps made up by the manufacturer and suitable for foreign markets. At times the agent was expected to take care of all advertising. In such cases the manufacturer usually gave the agent an advertising allowance based upon a percentage of total sales.

Protective Clauses:—Practically none of these contracts contained any clauses limiting the assignability of the agreement or subjecting the interpretation of the agreement to the jurisdiction of some state of the United States, or controlling the power of the agent to obligate the manufacturer to third parties.[1]

[1]For illustrations of contracts of this group see Appendices D, E and F.

VII

Foreign Agency Contracts—Mechanical Specialties*

Commodities Covered by the Contracts:—Twenty-two mechanical specialty contracts were examined. They covered such lines as adding machines, electrical goods and apparatus, fasteners and lubricators, office supplies, cash registers, brass valves and other small electric railway equipment, storage batteries, steel saws, typewriters, magnetos and spark plugs, telephone apparatus and switch-boards, and filing systems.

Organization of the Contract:—These contracts as a whole were better organized in subject-matter than was the non-mechanical specialty group. There were also more instances of well-balanced agreements with a nicely proportioned division of rights, liabilities, and duties between the two parties than was true of the previous group of contracts.

Grant of Agency:—In contrast with the non-mechanical specialty agreements, the nature of the agency granted in this group of contracts is with rare exception that of the merchant agent. That is, the agent purchases the manufacturer's products outright and sells them to the trade. The term "Agent" is not used, the agent being designated a "Distributor" or "Dealer," or "The party of the second part." Most of the contracts ran for a period of two years, showing a tendency towards a lengthy franchise. Due to the practice of trading in second-hand machines on new purchases in the use of certain of the commodities, such as adding machines and typewriters, the agent, in such instances, was permitted to handle competitive second-hand products taken in exchange and as part payment for the manufacturer's products.

Selling Efforts of the Agent:—The mechanical specialties contracts, as a whole, also go into more detail in specifying the selling efforts which the agent is expected to put forth than is

*See Appendix N.

true of the non-mechanical specialty group. They, of course, contain the general statement found in the non-mechanical specialties and machinery groups requiring the agent to put forth his best efforts to sell and increase the sale of the manufacturer's product. In addition, however, they frequently require the agent to maintain offices in certain specified cities, to provide and maintain suitable showrooms and fixtures, to see that the manufacturer's products are well exhibited and properly demonstrated, to help move the wholesalers' stocks by actively soliciting the ultimate users of the products, and also to carry on correspondence with customers and prospects. Many times the agent is specifically instructed by the terms of the contract to employ, instruct and maintain at all times an adequate and competent sales and service staff. Such a provision becomes important where the product requires considerable technical knowledge before it can be effectively sold.

Rendering of Service:—The service to be given by the agent to customers is particularly stressed in those agreements covering products of involved mechanism. The agent is compelled to carry on hand at all times an adequate stock of supplies and repair parts. He is also usually required to provide adequate facilities for repairing and adjusting the products of the manufacturer. This is to include a trained and competent staff of mechanics able to render such repair services. At times the products of the manufacturer are sold under a warranty guaranteeing performance for some definite period of time, usually one year. In such cases the agent is required to make all adjustments and repairs as may be necessary during the guarantee period gratis to the users, he being reimbursed therefor by the manufacturer. Where repairs and adjustments, not coming under a warranty, are made by the agent it is usually stipulated in the contract that he may charge the customer a reasonable amount therefor.

Keeping Stocks on Hand:—In the great majority of instances where the agent purchased the product outright from the manufacturer, the contract required the former to keep on hand at all times during the life of the agreement a stock of such

products. Usually the amount of such stock and the variety was not definitely stated, the clause reading "sufficient to meet all reasonable demands" or words of that purport. In some few instances the agent was required to keep a stock of each type of product on hand in quantities specified in terms of units of product or net value in the contract.

Prices:—Price quotations, where inserted in the contract, regularly quoted F. O. B. steamer or F. A. S. port of shipment. A substantial proportion of the agreements contained provisions regulating the prices which the agent could quote the trade. Where the agent was acting upon a pure commission basis the agent agreed by virtue of the terms of this clause to quote to the trade only such prices and discounts as were furnished him by the manufacturer from time to time. Where the agent was a merchant agent his resale price was variously controlled by stipulating that it should be fixed at the U. S. prices determined by the manufacturer plus an additional sum, as approved by the manufacturer, covering import duties and other landed charges, or at not less than such a price.

Trade Information:—An important characteristic of these contracts, as contrasted with other groups of agreements, is the detail trade information which many of them require the agent to submit to the manufacturer. Not only is the agent required to furnish the manufacturer information on market conditions in general in his territory, but this must be done at regular intervals. In addition, such clauses in this group of contracts call variously for monthly and annual reports of sales made including names of customers sold and the types of the manufacturer's product they bought, price paid, and such other information as may be called for by the manufacturer, such other monthly reports as the manufacturer may require, lists of customers and prospects, monthly and annual report of inventory of products and parts. The clause which contained these more detailed reports were largely found amongst the machine type of commodities.

Trade-Mark and Patent Protection:—A number of these contracts—over one-fourth—contained some sort of clause protect-

ing the manufacturer's trade-mark and patents, the use and registration thereof. These clauses required one, several, or all of the following of the agent: that the agent use the manufacturer's trade-mark only in sales of the latter's goods, that the agent should not register the trade-mark of the manufacturer without the latter's consent, that any registration of the manufacturer's trade-mark shall be in his name, that the agent waives forever in favor of the manufacturer all trade-mark rights in any word or symbol applied to the manufacturer's products, that the agent waives forever in favor of the manufacturer all patent rights on the manufacturer's products, that the agent agrees to use extensively the manufacturer's trade-marks and trade-names in selling the latter's products and in advertising them, and promptly desist therefrom upon the termination of the contract.

Cancellation of the Contract:—The contracts in all groups of agreements provided for the cancellation of the contract by either party if it no longer proved attractive by giving usually thirty, sixty or ninety days notice. However, this group of agreements is peculiar in that many of them provide that the manufacturer can cancel the contract *forthwith* in case certain contingencies arise. Among these latter are found: bankruptcy of the agent, insolvency of the agent, the assignment of his assets for the benefit of his creditors by the agent, failure upon the part of the agent to meet his obligations to the manufacturer, the agent's failure to attain the quotas specified in the contract, unsatisfactory credit condition of the agent, a change in the management and administration of the agent's firm, and/or a violation of the terms and provisions of the agency contract. The manufacturer reserves the right to cancel forthwith, *i. e.* without *prior* notice, no doubt, because such emergencies as these might require immediate action in order to protect his own interests.[1]

[1] For illustrations of contracts of this group see Appendices G, H and I.

VIII

Foreign Agency Contracts—Heavy Machinery and Large Installations*

Commodities Covered by the Contracts:—The commodities covered by this group of contracts differ from the mechanical specialties group in that they are commodities each unit of which represents a comparatively larger investment, they are at times built to specifications, and they require installation in many instances. Plows might be considered as an exception to these conditions. However, foreign agency contracts of farm machinery manufacturers include along with plows such heavy machinery as threshers, binders, reapers, etc., which undoubtedly belong to this group of commodities. The contract is drawn to meet the requirements of these more technical products, and its outstanding features are thus determined largely by them. One contract covering steel products is included in this group. Such products do not represent a large investment per manufactured unit, but they are nevertheless sold in large units, and are manufactured according to certain standard technical specifications. Besides steel products such as Kahn and rib bars, by-rib, rib-lath, United States sash, pressed steel, and standard building and farm machinery, this group of contracts covered wood-working machines, drills and lathes, pumps, tanks and storage systems, refrigerating and ice-making machinery, marine engines, compressors, pumps and dynamos, elevating, conveying, and mining machinery, light and power plants and sugar, rice and coffee machinery. The writer succeeded in obtaining fifteen such contracts.

Organization of the Contract:—These agreements, as a whole, were more brief than those found in any other of the groups analyzed. As far as the writer can ascertain, this is due primarily to the policy of this group of manufacturing exporters regarding the agency contract. They do not believe comprehensive agency

*See Appendix N.

agreements are necessary or desirable. Furthermore, a number of these exporters have been shipping abroad for a long time, their connections are of long-standing and have proven satisfactory with the contracts they now use.

Grant of Agency:—The grant of the agency in many of these agreements failed to make any mention of the matter of competing lines of products. It is always desirable, under ordinary circumstances, to prohibit an exclusive agent from handling competitive goods. Any such understanding between the manufacturer and the agent should certainly be made a matter of record by inserting a clause to that effect in the foreign agency contract. There are circumstances, however, where the manufacturer has practically no other alternative, particularly in this group of commodities where capable agents are scarce and business practice runs in this direction somewhat. The agent purchased the goods outright under all but one of these agreements. The agency ran from two to five years, being on the average, longer than for any of the other groups of agreements excepting the motion picture group.

Direct and Indirect Sales:—This group of agreements stands out in sharp contrast with the previous two groups in that they very seldom fail to provide for the matter of direct and indirect sales. The manufacturer usually agreed not to sell any goods direct to customers residing in the agent's territory and to refer all inquiries coming from the territory to the agent. In the few instances where direct sales were permitted the agent was protected by a commission due him on such sales made by the manufacturer. The manufacturer also agreed to use his best efforts to prevent others from selling his products in the agent's territory but at the same time did not guarantee the agent against such sales. Several of the contracts stipulated that should the manufacturer fill orders for commission houses and at the same time have knowledge of the fact that they were destined for the agent's territory he was to pay the agent a stipulated commission on such orders.

Warranty Clause:—About half of these agreements contained

short warranty clauses stating that the manufacturer guaranteed the machine to do first-class work under fair conditions and when properly used and that the manufacturer was ready to replace any defective parts without charge.[1]

[1] For illustrations of contracts of this group see Appendices I and K.

IX

Foreign Agency Contracts—Automotive*

Commodities Covered by the Contracts:—This group of seven agreements differs from the previous three in that it covers but one line of products, namely automobiles, both passenger cars and motor trucks.

Organization of the Contract:—The contracts were all in printed form and exceedingly lengthy, running from twenty-four to thirty and more detail clauses. The contents were exceedingly well organized. Legalistic terminology was used throughout, giving a very formal tone to the agreement. The individual contracts showed a striking similarity in content and treatment.

Grant of Agency:—The agreements regularly provided for a merchant agency. In granting the agency much stress is placed upon extra-territorial sales. The agent was not to solicit orders for, or sell, the manufacturer's automobiles outside the territory allotted to him in the agreement. The problem of extra-territorial sales of automobiles is complicated by the fact that such products are often transferred by the purchaser for use in some other agent's territory, and this second agent is required by his agency contract to maintain the manufacturer's guarantee and give adequate service to all cars in his territory regardless of where they were purchased. Where such transfers of automobiles occur only a short time after the sale it is obvious that the agent who made the sale receives his discount whereas the second agent would be compelled to stand the burden of maintaining the guarantee and providing adequate service without reimbursement on this particular transaction. As a result certain of the automobile agency contracts contain quite lengthy clauses covering the respective rights of the agents involved when such transfers are made. An idea of how this situation

* See Appendix N.

was covered by one agency contract can be obtained from the following clause quoted therefrom:

> (*a*) The Distributor agrees, that should any ("*X*" *Manufacturing Company's*) automobiles sold by him be transferred from the original territory through resale, transfer of ownership, donation, change of residence, or any cause within 90 days from date of sale by him, with or without his knowledge or consent, he will pay the distributor or dealer controlling the territory to which car has been transferred the difference between retailed delivered price of the car at the time of purchase and the net price at which he acquired the same, less ——% of retail delivered price which shall be deducted as a sales commission.
>
> (*b*) While the company will use every effort in assisting the collection of claims arising from infringment of territory, they will, however, assume no responsibility for their payment.

Half of the agreements failed to make any mention of the handling of competitive makes of automobiles.

Agent's Selling Efforts and Service:—The clauses covering the selling efforts of the agent were quite similar to those found in the mechanical specialty group except that the automotive agreements required, in addition, that the agent provide for the proper demonstration of the automobiles. This is due to the importance of demonstration in selling such products as these. Relatively more emphasis is laid upon service by this group of agency contracts than by the others. They required the agent to carry sufficient spare parts to meet the demands of the territory, even stipulating the size of the stock to be carried. This was calculated either upon the number of cars sold and delivered or the number of cars operating in the territory. The contracts further stipulated that the agent adopt the service policy of the manufacturer, and that he maintain an adequate service station and employ competent mechanics to make repairs and adjustments on the machines.

Prices and Terms of Sale:—Prices were frequently quoted on an F. O. B. factory basis which was seldom true of other contracts. The terms of sale were more rigid than any other group except the motion picture agreements. All of the contracts called for

cash payment in one form or another. One required payment of the net invoice on date of shipment from factory in Detroit. Another granted terms of cash against inland bill of lading, Detroit. Three contracts stipulated cash against shipping documents, New York. Another agreement stated that all shipments shall be paid for by establishing an irrevocable letter of credit without recourse to the manufacturer, for full amount of invoice, in any reputable New York Bank. The terms of payment in one contract read as follows:

> For the purpose of this standard contract it is understood that all shipments must be preceded by the establishment of irrevocable letters of credit in United States dollars in favor of the Corporation in an incorporated bank or trust company in New York, Chicago, or San Francisco—these letters of credit to be for the full amount of the order, including charges for boxing, freight, handling, insurance, etc., and it is agreed that policies or certificates of insurance shall be acceptable to the distributor.
>
> The Corporation will consider applications for better terms based upon the Distributor's audited financial statements, credit reports, bank references, the Corporation's past experience, etc., but each case must necessarily be considered on its own merits.
>
> Unless some special terms have been arranged at time order is placed, it is understood that standard irrevocable terms will apply.

The contracts did not require the manufacturer to give the agent any prior notice of price changes.

Government Purchases:—Without exception these agreements permitted the manufacturer to sell direct to any governments, the agent, in all but one instance, waiving all claims for commissions or discounts on such business. It is evident that American automobile manufacturers have inserted this provision in their contracts because they feel that the agents are not equipped to handle the quantity purchases of automobiles by governments nearly so effectively as their own organizations.

Warranty Clause:—The warranty clause assumes more importance in the automotive group of agency contracts than in any other of the groups analyzed in this study. Six of the contracts contained a clause stating that the manufacturer's guar-

antee was the standard warranty against defective material and workmanship. In five of these instances the warranty, in full, was printed in the contract. The warranties were the standard warranty of the National Automobile Chamber of Commerce. This warranty, as quoted in one of the contracts, reads as follows:

> This is to certify that We (*the "X" Manufacturing Company*) of (————) warrant each motor vehicle manufactured by us, whether passenger car or commercial vehicle, to be free from defects in material and workmanship under normal use and service, our obligation under this warranty being limited to making good at our factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser, be returned to us with transportation charges prepaid, and which our examination shall disclose to our satisfaction to have been thus defective; this warranty being expressly in lieu of all other obligations or liabilities on our part, and we neither assume nor authorize any other person to assume for us any other liability in connection with the sale of our vehicles.
>
> This warranty shall not apply to any vehicle which shall have been repaired or altered outside of our factory in any way so as, in our judgment, to affect its stability or reliability, nor to any commercial vehicle made by us which shall have been operated at a speed exceeding the factory rate of speed, or loaded beyond the factory rated load capacity.
>
> We make no warranty whatever in respect to tires, rims, ignition apparatus, horns or other signaling devices, starting devices, generators, batteries, speedometers or other trade accessories, inasmuch as they are usually warranted separately by their respective manufacturers.

Trade-Mark and Patent Protection:—In all of these agreements there was found a provision protecting the manufacturer against indiscriminate use and registration of trade-marks, and trade-names, by the agent. Such clauses required in substance, that the agent was not to use the manufacturer's trade-name as a part of his firm name except with the prior written consent of the manufacturer and that the agent was not to obtain any interest whatsoever by registration or otherwise in any trade-name or trade-mark used in connection with the manufacturer's products without the written consent of the manufacturer. They also stipulated that the agent acknowledges the validity of patents owned by the manufacturer and agrees not to infringe upon them.

Repurchase of Products:—This group of contracts was distinctive in its use of the repurchase clause. This clause gave the manufacturer the right, at his option, to repurchase upon termination of the contract any or all such automobiles and parts as the agent had on hand at cost prices to the agent, usually arrived at by adding the agent's net purchase price, transportation costs and duties. The manufacturer, by the exercise of his option, can effectively prevent the former agent from abusing the manufacturer's established sales policies.

Protective Clauses:—These contracts contained, almost without exception, clauses stipulating that the terms of the contract could not be altered unless in writing signed by some designated official of the manufacturing company, that the manufacturer was exempted from any responsibility due to delay in filling and shipping orders caused by wars, strikes, fires and all other causes beyond the control of the manufacturer, that the distributor was not authorized nor empowered to act as the agent of the manufacturer and was not to incur obligations on behalf of the manufacturer in any way, that the contract was not assignable except with the prior written consent of the manufacturer, and that the contract was executed in a specified state of the United States and was to be construed according to the laws of that state.

Cancellation of the Contract:—There was a tendency in these contracts to be more arbitrary in treating the matter of the cancellation of the contract than was true in the other groups of agreements. As was true of many of the mechanical specialty agreements, these contracts gave the manufacturer the right to cancel the agreement forthwith in the event of exceptional contingencies arising such as were mentioned above.[1] This is only reasonable. However, over half of the contracts allow the manufacturer to cancel the agreement immediately upon the giving of written or cabled notice to the agent. No *prior* notice is required.

On the face of it this seems to be an equitable arrangement since the agent, as well as the manufacturer, is at liberty to

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[1] See Page 85.

cancel the contract for any or no reason immediately upon giving notice. Nevertheless, the agent is at a relative disadvantage. He is devoting his major efforts to the representation, it is also his one primary source of income, whereas the manufacturer is selling his products through many agents and the volume of sales of any one foreign agent forms only a very small portion of his total business. The immediate cancellation of the contract by the manufacturer would undoubtedly work more hardship upon the agent than it would upon the manufacturer if the agent exercised this privilege.

Three contracts required 30 days prior written notice of cancellation under ordinary circumstances. This seems to the writer to be reasonable. However, certain foreign automobile agents maintain that even a ninety-day clause does not cover the necessities of their condition because they find the banks unwilling to extend them loans on the basis of the agency contract since it is rather uncertain security when it can be cancelled in such a short time. Such an argument of course, applies even with more force where cancellation requires no prior notice. However, the agency contract is principally a sales document and not financial collateral and where selling conditions indicate the advisability of a maximum of say 30 days prior notice the foreign agent can not expect the manufacturer to extend this period of time merely for the former's financial convenience.

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[2] For an illustration of the contracts of this group see Appendix L. This agreement is quite typical of the group.

X

Foreign Agency Contracts—Motion Pictures

The writer analyzed three foreign agency contracts of American producers' distributing companies covering the export of motion pictures from the United States.[1] The contracts as a whole were quite similar in content and wording. They showed certain marked differences, however, from all the previous classes of agency contracts.

Grant of Agency:—The nature of the agency created by the provisions of these contracts is unique. The agent is given an exclusive license to exploit, exhibit and distribute the positive prints of enumerated productions throughout a designated territory. The positive prints are not sold outright to the foreign agent, nor does the agent endeavor to sell such prints on a commission basis to foreign motion picture houses. The agent leases such positive prints from the American exporter paying the latter a certain royalty therefor, usually stated in the form of a lump sum for each subject delivered to the agent. Moreover, the exclusive license granted the agent pertains only to the productions enumerated in the contract. Such franchises are usually granted for a period of from three to five years from the date of delivery of the specified subjects, a longer average period than found in any of the other classes of foreign agency contracts.

Royalties and Terms of Sale:—The terms of sale found in these contracts were alike in all cases. The foreign agent was required to pay a certain lump sum to the American house as a royalty for the exclusive rights to such productions for the period of the

[1] The fact that the statements in this chapter are based upon the analysis of only three contracts might make it appear that what is found here might not be representative of this group of foreign agency agreements. However, there are only about a dozen American producing companies exporting motion pictures direct to foreign agents. A manager of the Foreign Division of one of the largest of these has, furthermore, stated in a letter sent to the writer that such contracts were representative, all contracts used by such producer companies being nearly identical in content.

license.[2] Such royalties and all costs connected therewith due the American house were to be paid by the foreign agent in New York funds on the delivery or the tender of delivery of the prints in New York City, such delivery to be made at the New York office of the motion picture corporation.

Prints:—The contracts also regularly contained a group of clauses relating to the supplying of additional prints, and the alteration and return of prints. In all the contracts the lessor (motion picture firm) agreed to furnish the lessee (foreign agent) additional positive prints upon the latter's request. In one instance, the number of additional prints which the lessee could call for was limited to a certain maximum; in another case the limit was placed at that number which the lessor deemed reasonably necessary for the proper exploitation of the agent's territory. One contract made no mention of any such a maximum. The contracts stipulated that delivery of prints by the lessor was subject to the existence of the negative in good condition, otherwise the lessor was relieved from furnishing prints. The contracts further provided that the costs of such additional prints were to be borne by the foreign agent, who was to pay three and one-half cents per linear foot for each print delivered subject, in two instances, to cost changes due to fluctuations in the cost of the necessary raw materials. The contracts uniformly required that the lessee shall not copy nor duplicate prints nor permit the same to be done. One contract further stipulated that the lessee was not to purchase or accept positive prints of the productions enumerated in the agency contract from anyone else and was to report to the lessor's office all offers made by others to supply the lessee with such prints. Two of these contracts further required that the lessee was not to make any changes or alterations in the prints without the prior written consent of the lessor. The contracts regularly required that all prints be

[2] In these contracts the royalty was in form of a lump sum. *Independent* distributing corporations often use a percentage arrangement, royalties being paid on a percentage basis. That is to say, the foreign agent pays a lump sum, say five thousand dollars, to the corporation, on delivery of the films, the agent is then permitted to retain, say ten thousand dollars, for expenses and profit from the receipts from the exhibitors in his territory, and the remaining receipts, if any, are split: fifty per cent to the corporation and fifty per cent to the agent.

returned upon the expiration or termination of the license, and further, that if any such prints were lost, stolen, or accidentally destroyed, the lessee was to furnish the lessor with affidavits to that effect.

All of the contracts read contained a clause relating to the title of the prints. This stated in effect that legal title to all films covered by the agency agreement remains in the lessor, or such parties as designated by the lessor. Two of the contracts stipulated, in addition, that the films were not to be sold by the lessee.

Extra-Territorial Clause:—The contracts stipulated that the lessee and his agents were not to exhibit nor cause to be exhibited in any other territory the films covered by the agency agreement. It is at times further required of the lessee that he place a similar provision in all his contracts with sub-lessees. The lessor on his part agrees that he will not exhibit nor grant others the right to exhibit any productions enumerated in the agency contract in the lessee's territory.

Advertising:—The contracts regularly contained a clause covering advertising. These clauses stipulate that the lessor agrees to furnish the lessee with usual advertising matter and deliver the same to the latter in New York City to be paid for by the lessee at the usual rates. Frequently a clause is placed in the contract requiring the lessee to direct his advertising along the lines followed by the lessor, and that all the lessee's advertising and exploitation efforts shall feature the lessor's name and trademark.

Protective Clauses:—These contracts regularly provide that the performance of the terms and conditions of the contract by either party is subject to Acts of God, war, strikes, lockouts, delay in transportation, or other causes beyond the control of either party. Furthermore, where the distributing company has entered into contract with its parent producing company for handling the distribution of the latter's films the foreign agency contracts of the distributing corporation regularly contain a clause which states in substance that the lessor is not liable under this contract for his default due to producers' defaults on contracts between the lessor and the producer corporations.

The contracts always contain a clause to the effect that the agreement is personal and can not be assigned without the prior written consent of the lessor. All contracts stated that nothing in the contract constituted the parties thereto partners nor authorized either party to contract any obligations for the other party. Without exception these contracts contained a waiver clause stating that no waiver, expressed or implied, by the lessor of any breach or default of the contract shall be considered to be a continuous waiver, or to be a waiver or consent of subsequent waiver. It was further stipulated that all questions arising under the contracts were to be governed by the laws of the State of New York. There is inserted in these contracts provisions to the effect that all promises, covenants, conditions and agreements contained in the contract are of the essence of the agreement. Another common clause states that all rights and remedies given in the contract to either party are in addition to and not in lieu of or in limitation of such as are granted by law and/or equity. These contracts also stipulate that the covenants contained therein bind the parties thereto, their representatives, successors, and assigns. One contract contained a clause stipulating that the instrument expresses the entire contract and that there exists no oral or implied warranties, representations or conditions.

Cancellation of the Contract:—While all of the contracts which the writer has read contain cancellation clauses their wording is not uniform. In this one instance there was considerable variation between the contracts. Probably the most liberal treatment is exemplified in the contract which provided in effect that should the lessee breach, default, or fail to faithfully carry out the terms of the agency agreement the lessor could demand, by registered mail, rectification within thirty days from the mailing of such notice. If the lessee did not rectify such matters within this time the lessor had the option of extending such time or of cancelling the contract immediately. The other extreme is represented by the contract stating that the lessor had the right to cancel the agreement immediately upon violation of the contract by the lessee. Upon cancellation the lessor was entitled

to the possession of all prints covered by the contract wherever these may be found. All sums paid by the lessee to the lessor were to remain the property of the lessor. In case of bankruptcy or insolvency the lessor might also cancel forthwith. The contingencies which would permit cancellation by the lessor were enumerated in detail. They include: (*a*) legal enactments in the foreign country prohibiting the importation of prints not yet delivered, or the passage of any American laws which would prohibit the exportation of such prints from the United States, (*b*) failure of the lessee to pay any sums due the lessor, (*c*) the exhibition of the productions under the license outside the lessee's territory, (*d*) failure of the lessee to accept proper delivery of films, (*e*) return of prints by the lessee in an improper manner, (*f*) lessee's exhibiting films without a license, (*g*) the sale of the prints by the lessee, (*h*) cessation of business on the part of the lessee for thirty consecutive days, and (*i*) bankruptcy or insolvency of the lessee.

Special Clauses:—At times certain special clauses are inserted in motion picture foreign agency contracts.[3] Among such provisions are found those requiring the lessee to do everything necessary to secure copyright and registration of the production, those specifying that various expenses such as duties, forwarding and shipping charges, consular fees, and insurance are for the account of the lessee, those stating that all titles and sub-titles are to be in a specified language, those providing for the release of the films by the lessee within a certain period of time after delivery of the same, those requiring the lessee, immediately upon demand of the lessor, to disclose the whereabouts of each and every print delivered under the contract, those requiring a deposit by the lessee as guarantee of faithful performance, those governing the presentation of claims by the lessee against the lessor, and those holding the lessor free from any liability for infringements on rights of authors or other copyrights in the lessee's territory other than a refund of the royalty paid.

The unique characteristics of this set of contracts as compared

[3] These special clauses are only exceptionally found in such contracts.

with the other groups of foreign agency contracts is due to the peculiarities of the product and its markets. The uncertainty of the market value of the product, the practice of leasing the films, the necessity of controlling the use of the prints, and the exhibition value of old prints call for agency contracts of a nature quite different from those best suited for the groups of commodities discussed in previous chapters. What has been said in the other chapters of this study must be modified to meet these unique conditions.[4]

[4] For an illustration of contracts of this group see Appendix M.

XI

Foreign Agency Contracts—Market Conditions

No two foreign markets exhibit the same market characteristics. Each has an individuality of its own, which often stands out in sharp contrast with that of its neighbors. The fact that one form of agency has brought excellent results in one country does not vouch for its effectiveness in another territory. Certain conditions of the market, not obtaining in the first country, may make the agreement hopelessly inadequate in various respects. By this it is not meant to be implied that an entirely different agreement must be drawn for each and every foreign market. Many manufacturers today are successfully operating under a single basic contract form used for all foreign countries. However, such exporters do make it a practice of altering certain clauses where differences in market conditions dictate the advisability of such changes. By and large, the terms of the agency relationship must be drafted to meet the peculiar market requirements of each territory. In some cases the resulting agency agreements will vary considerably from country to country, while in others, only minor differences might appear.

Of market conditions whose variation from country to country necessitate corresponding differences in the terms of the agency contract none is more important than the credit and financial situation of the market. Where the entire credit structure of the country is in a precarious condition the agency contract must ordinarily require cash payments. The American consul general writes under date of May 15, 1924, of the Hungarian market: "The only terms that are safe for an American exporter are cash in advance or a confirmed letter of credit." In a market such as England, with sound financial conditions, such terms are not only unnecessary, but also unobtainable. Differences in prevailing interest rates as between sales territories may require but two per cent cash discount in one market, whereas in another, due to the much higher interest rates which prevail there, a ten per cent discount is necessary in order to obtain cash payments.

Differences in exchange rates are bound to vary the terms of sale clause of the agency agreement. One manufacturer writes: "For the past two or three years we have been selling in Australia in sterling on the basis of $4.60 to a pound. In Argentina also we have up to the first of this year made a ten per cent allowance to offset the depreciation which at one time ran well over thirty per cent." Due to differences in credit customs it may be found necessary to provide in the terms of the agency agreement for the handling of a large percentage of the total sales in Latin-American countries on credit or installment accounts, whereas in Canada and Australia cash payments can be demanded. The difficulty of obtaining adequate credit information and the uncertainty of credit conditions in a market such as India may practically force the manufacturer to insert a clause in his agreement compelling the agent to guarantee accounts.

The structure of the trade organization varies considerably in different foreign markets. In certain markets the buyers insist upon placing their orders through American export houses. This is often true of purchasers in the West Coast countries of South America. In such a case the agency agreement must provide adequate protection to the agent on orders closed by the latter, but handled by the export house designated by the customer. In other countries there exist a limited number of large jobbers, or several quantity consumers who refuse to deal with an agent, in which case the agreement must make specific provision for such direct sales and at the same time state what protection the agent is to have. In selling mill supplies in Cuba, American manufacturers of saw and steel products have met this situation by providing in their contracts for direct sales. Where the trade is so organized that the large importing houses which are available to accept agencies have standing sub-agency agreements with smaller firms in smaller outlying centers the use of such sub-agencies is likely to require a somewhat more lengthy period of prior notice in case of cancellation of the agency agreement by the manufacturer.

The geographical attributes of foreign countries vary quite markedly, and such variations are reflected in agency agreements. As a consequence we find the extent of the territory for which

exclusive selling rights are given the agent differs as between one foreign market and another. Mountain ranges divide Honduras into three distinct markets with little inter-communication, impassible wildernesses make the northern and southern parts of Brazil inaccessible by land, and the narrow body of water separating the Island of Ceylon from the mainland of India has made two quite independent markets of the southern part of India and Ceylon. Here the territory granted an agent may be necessarily of limited size, whereas, in the absence of such conditions, the agent can be granted more extensive territorial sales rights. The very areal extent of certain countries, such as Russia, India and the like, makes it often impracticable to grant one agent exclusive rights for the entire country. This is particularly true where transportation facilities are not well developed. Some markets, such as Canada and Cuba, are located relatively near the United States, while many others are far removed. As a result commercial communication may consume much or little time. This would vary not only with distance but also with the efficiency of the available means of communication. Where foreign markets are distant, and means of communication not well developed, drafts drawn "from date" are likely to be of longer tenor than would otherwise be the case, since it takes longer for the drafts to reach the consignee. Much the same is true of the length of the period of prior notice of cancellation of the agreement where this period dates from the time of mailing the notice.

The terms of agency agreements also vary according to the consuming capacity—sales possibilities—of foreign markets. Obviously the quotas set forth in the quota clauses of the agreement must be graduated for sales territories according to the absorption power of such markets. The greater the consuming capacity, the larger will be the purchase or sales quotas. The commissions stipulated in agency agreements also vary with the relative richness of the territory. It is also true that where a foreign market has large immediate and potential sales possibilities, the agency agreement will require the agent to keep larger stocks on hand than would be true where the market possibilities are more restricted. Furthermore, some agreements with agents can stipulate that the agent is to handle only allied lines, whereas

others can not require this, such differences being conditioned in large part upon the relative volume of business which can be done in such allied lines in the various markets.

Business customs differ from market to market and call for variations in the terms of agency agreements. It is said that English houses in the Far East balk at specific quantity requirements, and that Latin-American houses insist upon the inclusion of specific prices in the agency contract. One manufacturer states that much depends upon the buying habits of the customers in any territory as to whether or not the agent is required to carry stocks. Automobile tires are sold in the southern part of Spain by agents who are customarily entrusted with consignment stocks and it is difficult to expand business in this particular line in any other way. Here the agency agreement must make provision for such consignments.

Another cause at times bringing about differences in agency agreements lies in the fact that the laws of countries vary. In selling goods in one country a manufacturer meets with legal requirements which may differ radically from those obtaining elsewhere. This is particularly true of the customs laws. Where foreign markets are barricaded with high tariff walls it has been found necessary, under some circumstances, to provide in the agency contract that the manufacturer will assume part of the burden of the custom duties. In a country like Mexico, the custom laws levy such high duties upon the importation of patent medicines, for instance, that the American manufacturer must permit the foreign agent to manufacture the product himself. In many other countries, however, with lower tariffs, no such terms need be inserted in the agency agreement. The framing of a clause covering the arbitration of disputes would vary according to the differing requirements of the law on arbitration in various countries. The laws governing consignments of goods also vary to such an extent as to reflect themselves in the use of consignment clauses in agency agreements. In Italy the taxation laws have caused the manufacturing exporter to draw up a special agreement designed to remove the legal necessity of paying taxes on business done in that country through his foreign agent. While this is by no means common, it gives point

to the fact that agency agreements vary with the variations of the law applicable to different foreign markets. Mr. William G. Marvin, in an address before the Tenth National Foreign Trade Convention held at New Orleans in 1923 (see the Official Report, Pp. 166), said: "The experience of my firm has shown that the American exporter should take particular care in drawing up his agency contracts with representatives in the following countries: Holland, Turkey, Algeria, China, Japan, the Caribbean countries, Central America, all South American countries, Spain, Italy, Greece, and Portugal. The laws of these countries are particularly troublesome so far as the agency status is concerned. The laws of Great Britain and her possessions, the Scandinavian countries, Germany and Belgium are very just and equitable."

The amount of competition which the manufacturer meets in foreign markets varies from country to country. As a result the manufacturer must alter the terms of his agency agreement accordingly. Such alterations would be particularly necessary in the price clause, where prices are actually quoted in the contract. In some markets very keen competition is found in the matter of credit extensions, in others such competition is largely absent. As a result agency agreements covering certain territories must provide for more liberal terms of sale than would be granted in agency contracts for other countries. Keen competition has compelled manufacturers to make provision in their agency contracts for consignment stocks to be carried by agents handling such territories. In those markets where competitors are more strongly intrenched than in other countries more selling effort is required of the agent in attaining a given sales volume, and it is likely necessary to remunerate him more generously by allowing larger discounts or commissions under the agency agreement. The pervasive effects of differences in competition found in different markets is such as to likely reflect itself in almost any of the provisions of the agency contract.

From what has been said above, it does not follow that any particular manufacturer need construct anew an agency agreement for each and every foreign market. As previously suggested a standard basic agency agreement might well be used as a master

pattern to be varied accordingly as the market conditions of the sales territory in question would seem to dictate. Undoubtedly much of the master contract would not need to be altered, nor would such alterations be frequently necessary. The important thought here is not to fail to ascertain whether such alterations are necessary, and where it is found that they are necessary, to be sure that they are made.

NOTE.—This chapter, with the exception of the one quotation contained therein, is based entirely upon statements from some fifty export managers obtained through correspondence or personal interviews.

XII

COOPERATING WITH THE FOREIGN AGENT

Importance of Cooperating with the Agent

Exporters often summarize the agency problem in some such pithy admonition as this: "Select your agent carefully and then back him to the limit." Particularly the more progressive and informed export managers invariably lay much stress upon the necessity of cooperating fully with the foreign agent.[1] It is quite as necessary to support foreign agents as domestic agents. Since the foreign agent is at the point of maximum sales stress anything which can be done to increase his effectiveness will show the more results. For instance, various forms of cooperation are primarily devoted to increasing the knowledge of the agent regarding the products and policies of the manufacturer. This process of educating the agent must be carried on in some way if the manufacturer hopes to get reasonable sales volume. It should also be remembered that proper cooperation is a necessary element in building up the good-will of the foreign agent.[2] It assures him that the manufacturer stands ready to lend him every assistance to make the representation as profitable to the agent as possible. This calls forth a reciprocal attitude on the part of the agent toward the manufacturer.

Forms of Cooperation

The manufacturer has at his disposal a number of means of cooperating with his foreign agent. Sales promotion work on the agent, designed to improve his merchandising efficiency and to stimulate him to greater sales efforts, can be made of real assistance to the agent. The manufacturer should see that he receives all the necessary instructions and education regarding

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[1] See Walter F. Wyman, *"Cooperation: A Key to Foreign Trade," The World's Work*, August, 1915.

[2] See Philip B. Deane, *"Developing the Buyer into a Customer," Official Report of Eleventh National Foreign Trade Convention, 1924*, Pp. 140.

the product. The entire list of dealer and consumer sales arguments should be placed in his hands.[3] Examples of how difficult prospects have been sold should be sent him.[4] The agent should, furthermore, be fully instructed as to the merchandising methods to be used, and the sales policies and services he is to carry out.[5] He should be educated to a broad knowledge of the application possibilities of the goods.[6] The manufacturer should be ever ready to help the agent analyze local market conditions and to offer suggestions on how to overcome major sales obstacles. Some manufacturers have sent representatives to foreign countries for the purpose of giving personal instructions to agents' sales staffs in the technical features of their product, how to properly operate them, how to take care of them while in use, how to repair them.[7] Where branch houses are used in conjunction with an agency system the technical men of the former are available to do this work. Other manufacturers have encouraged the agent to send members of his staff to the manufacturer's plant in the United States and have them go through a period of training there.[8] This is also particularly true where mechanical goods are involved. These men are put through a regular plant training school for one to eight months, where they work on the product under supervision, study the manufacturer's sales and credit policies, do a little practice selling in the United States, and are fully instructed in the export merchandising and shipping methods of the manufacturer. The expense of such a trip is at times borne partly by the manufacturer.

Constant personal contact with the agent, where the volume of business warrants this, permits the manufacturer to give the agent's problems first-hand study and personal advice. There is no better way of effectively cooperating with the agent than hav-

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[3] See "*Export Merchandising,*" Walter F. Wyman, Pp. 338.

[4] See "*Course In Foreign Trade,*" *Business Training Corporation*, Vol. V, Pp. 41.

[5] See Colonel Fred Cardway, "*Psychology in International Merchandising,*" *Official Report of Eighth National Foreign Trade Convention, 1921*, Pp. 259.

[6] See "*'Selling' Your Foreign Representatives,*" *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, December 25, 1922.

[7] See Charles Beaver, "*Direct Selling in Europe—Larger Nations,*" *Official Report of Sixth National Foreign Trade Convention, 1919*, Pp. 382.

[8] See B. L. Moore "*Selling a Specialty Abroad,*" *Export Trade and Finance*, May 12, 1923 Pp. 9.

ing an expert on the ground and ever-ready to sit down with the agent and thrash out their mutual sales problems together. Some concerns are able to maintain such representatives for various foreign markets who, while they supervise foreign selling, at the same time lend every possible personal assistance to the foreign agents.[9] Such assistance is particularly necessary during the period of introduction, and manufacturers who could not keep a representative always on the ground, have sent one or two men into the agent's territory to assist him in introducing the product. Some few manufacturers go further than this and travel one or two men through foreign markets for a certain period of time doing nothing but "missionary" work amongst the agent's clientele.[10] Should executives of the manufacturing concern be traveling abroad a visit, even though purely social, should be made to the agents. It gives the agent a sense of real importance and furthermore makes for greater confidence on his part in the American concern.

Where the agent sells to dealers rather than direct to the consumer or user sales promotion work on such dealers done by the manufacturer direct has been found effective in assisting foreign agents.

The manufacturer can also assist his agent through the use of dealer helps and related advertising matter. Such dealer helps may take a variety of forms such as sales letters,[11] catalogues, booklets, circulars, folders, newspaper electros, window displays, window cards and posters, cut-outs, counter cards, wall posters, show cases, painted signs, road signs, shop or identification signs, blotters, calendars, other novelties, samples,[12] lantern slides, motion picture films and other minor forms.[13]

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[9] See James D. Mooney and L. H. Kurtz, "*Advertising for Overseas Markets*," *Official Report of Tenth National Foreign Trade Convention, 1923*, Pp. 349; R. N. Cliffe, "*Selling Batteries and Service in South America*," *Export Trade*, October 28, 1922, Pp. 6.

[10] See Ernst B. Filsinger "*Manufacturer's Agent or Merchant Distributor?*" *Export Trade and Finance*, May 12, 1923, Pp. 14.

[11] See "*Course In Foreign Trade*," *Business Training Corporation*, Vol. V, Pp. 41.

[12] See Mr. C. J. North, "*Power and Use of the Sample in Export Selling*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, February 5, 1923.

[13] See David Leslie Brown, "*Cooperating With Dealers*," *Official Report of Ninth National Foreign Trade Convention, 1922*, Pp. 474; W. R. Cummings, "*Keep Up the Foreign Customer's Morale*," *Export Trade*, April 2, 1921, Pp. 16.

How such advertising is to be put up,—matters of copy, illustration, color, etc.,—are a problem of advertising, as such, and are not directly pertinent to this study. However, the proper use of these dealers helps must be given some consideration here. The fact that the manufacturer is ready to supply such dealer helps can be used advantageously in selling the agency to the prospective agent.[14] The results which will be obtained from the use of such helps depends much upon their proper adaptation to foreign market conditions, thoroughly selling the agent on the material used, and the conditions under which the material is supplied. The dealer helps must be so arranged as to coordinate with the advertising and selling plans of both the manufacturer and the agent. They must also be adapted to market conditions in the foreign country. In these respects it is well to consult the agent on their preparation, form and sequence.[15] The agent will make little use of dealer helps which he does not believe suitable or effective. The manufacturer should be careful to convince the agent of the desirability of making the most use possible out of them. By consulting the foreign agent on their make-up, by soliciting his opinions of the best way to use them, by pointing out the success of their use in other foreign markets, and by requesting him to check the results of the use of such materials the agent can be brought around to a full appreciation of their value in distribution.

There is some difference of opinion regarding the conditions under which such materials should be furnished the agent.[16] It relates primarily to the amount and the expense of the materials. All exporters seem to agree that dealer helps should be given to foreign agents in as large quantities as they have need for. The important problem is to determine this amount. This can be done only by a study of all the conditions of each individual agency relationship. There is the further problem, however, of determining how this quantity shall be distributed to the agent and his customers and what, if any, charges for the material

[14] See Pages 55 and 56.

[15] See "*Course In Foreign Trade*," *Business Training Corporation*, Vol. V, Pp. 41-42.

[16] See Arthur Williams, "*Free Advertising Matter*," *Export Trade*, September 4, 1920.
Also M. Thomas Ackerland, "*Why the Exporter Should Furnish Free Advertising Matter*," *Export Trade*, October 9, 1920.

will be made. It appears that dealers helps are usually given free of charge to the agent for use and distribution to his clientele.[17] For especially expensive forms the agent may be requested to share a part of the expense. It is often wise to specify that the agent must make special request for dealer helps in such quantities as he feels he needs, subject to alteration by the manufacturer. Indiscriminate shipping of dealer helps to foreign agents is worse than insufficiency of dealer helps.

Direct advertising by the manufacturer is an effective way of assisting the agent. This may take the form of newspaper, magazine, trade-journal or other general advertising. The manufacturer should insert in all ads, in a prominent place, the name and address of the agent.[18] Such advertising is, at times, done gratuitously. In other instances, the agent bears part of the expense, usually fifty per cent. Once the agency has reached a stage of substantial profit to the agent, and the advertising is done on a fairly large scale it would seem only just that the agent assume part of the expense. Direct advertising by the manufacturer is but a means of reducing sales resistance and enabling the agent to sell more easily and more abundantly.[19]

Quite as important as any of these specific forms of cooperation, as such, is the prevalence of the same spirit of willingness on the part of the manufacturer to assist the agent in many of the general problems which arise. The manufacturer should see to it that the agent's equitable rights are fully protected in all matters relating to direct and indirect sales in his territory. By allowing a full or split commission in the former case and by doing all he can to prevent any unfair encroachment upon the agent's exclusive selling rights through sales to commission houses and other export media, destined to the agent's territory, the manufacturer can do much to convince the agent that he is ready to stand behind him in all respects. The attitude of the manufacturer toward credit extensions and the degree in which he is willing

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[17] This statement is based upon the examination of the advertising clauses of some sixty foreign agency contracts.

[18] See Editorial, "*Better Publicity for Foreign Agents*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, May 21, 1923.

[19] For a detail discussion of forms and technique of general export advertising see Carl F. Propson, "*Export Advertising Practice.*"

to cooperate with the agent to meet the proper credit requirements of the market are very real means of assisting the agent. They may count more toward a development of cooperative spirit between the parties than all the dealer literature put together. The cabling of notice of sales opportunities which the manufacturer runs across in the United States has been found a valuable way to cooperate with the foreign agent.[20] Many other such opportunities arise in every agency relationship, which though small in themselves, go far toward creating the necessary spirit of cooperation which should permeate the agency agreement.

The fullest and most intelligent cooperation of the manufacturer with his foreign agent is a sure way to maximum sales.

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[20] "*Keeping Our Distributors on the Alert*," *Commerce Reports*, Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, June 25, 1923.

XIII

SUMMARY

This treatise has presented a study of a particular system of direct export distribution available to American manufacturers, namely, the foreign agency method. This export method is of special importance to American manufacturers because the great majority of them, particularly the smaller manufacturers and those just launching into direct exporting, must depend primarily upon it. And for many markets even the largest manufacturing exporters must rely upon this system.

The manufacturers of the United States represent all stages of experience and development in export trade. Many have never sold any of their products abroad, either in an indirect or direct way. Others, while they have never engaged in direct exporting, have nevertheless gained some knowledge of exporting, however meagre, by shipping their products to overseas markets through various American middlemen who bear the brunt of export selling. Still another group of manufacturers have only within the past decade entered upon direct exporting. As a consequence they themselves have been compelled to shoulder all the responsibilities of direct selling abroad. Their experience is, however, somewhat limited, and many of them are admittedly yet in the embryonic stage of export development. Lastly there are some few American manufacturers who have been exporting direct to overseas markets for upwards of a quarter of a century, whose foreign distribution is world-wide, and who have accumulated during this protracted period a vast amount of valuable experience. It is obvious that an explanation of the problems of the foreign agency system, as they would face manufacturers in one or the other of these various stages of export development, would differ materially. Some one definite starting point needed, however, to be established and the writer chose to attack the problem from the viewpoint of the manufacturer just entering direct exporting. This was done for several reasons. First, the vast majority of American manufacturers have not yet gotten beyond this stage of development, although some day, no

doubt, many of them will go into direct exporting. Secondly, this mode of attack forces an analysis of the entire foreign agency problem from the foundation upwards, lending itself to a coherence, clarity and perspective not otherwise obtainable. Lastly, such a procedure does not destroy the value of the study for manufacturers in the other groups. Many have not yet entered certain foreign markets, in which case the problem of using foreign agents presents itself to them much as it would to the manufacturer just entering direct exporting. Also, where they must remodel and improve their distribution structure much of an analysis made from the point of view adopted here will still be of value.

Since the foreign agent is the distinctive feature of the system of export distribution studied here, the treatise opened with a definition of the terms "agent" and "foreign agent." An "agent" was defined as "one who is appointed to directly promote the sales of the exporter's products in some defined territory where he is granted certain exclusive sales rights." A "foreign agent" was defined as "an agent whose residence or main office is located in a foreign country, or an outlying possession of the United States." Foreign agents were then classified according to certain of their major characteristics, giving emphasis to the range of possibilities in using such intermediaries. This classification is summarized in the tables on pages 115 and 116:

Once the manufacturer has decided to export direct he must first ascertain whether the foreign agency method is the most desirable selling approach to any one or more of his foreign markets. This must be recognized as a problem independent of the desirability to export direct. It should be given special study. It has been shown that there are certain fundamental prerequisites to the use of the foreign agency method:

1. A volume of business sufficient to make the agency profitable to both parties.
2. Adequate financial resources to permit the manufacturer to "carry on" in the agency arrangements.
3. Production commensurate with foreign market requirements.
4. Intelligent executive control and direction of the agencies.
5. A sound export policy consistently followed by the manufacturer.

According To:	Classes	
1. Residence	1. Domestic Agent	
	2. Foreign Agent	1. Within the foreign country.
		2. Within one of the foreign countries.
		3. Without the foreign country or countries.
2. Nationality	1. American agent	
	2. Native agent	
	3. Agent of third countries	
3 Trade Group	1. Manufacturers' agent	
	2. Importer	
	3. Wholesaler	
	4. Wholesale-retail concern	
	5. Retailer	
	6. Non-trading concern	
4. Fixity	1. Resident agent	
	2. Travelling agent	
5. Business Organization	1. Corporate	
	2. Partnership	
	3. Individual trader	
6. Immediate Sales Destination	1. Merchant agent	
	2. Commission agent	
	3. Mixed agent	
	4. Lessee agent	

7. Selling Rights	1. Exclusive agent 2. Semi-exclusive agent
8. Lines Handled	1. Agents handling many unrelated lines 2. Agents handling only a small group of related lines. 3. Agents handling only one or two commodities
9. Stock Carried	1. Warehousing agent 2. Consignment agent 3. Non-stock agent
10. Credit Responsibility	1. Del credere agent 2. Modified del credere agent 3. Ordinary agent
11. Directness of Relationship with Exporter	1. Direct agent 2. Sub-agent
12. Branch of Foreign Trade Engaged In	1. Export agent 2. Import agent 3. Export-Import agent
13. Special Types	1. Indent agent 2. Manufacturing agent 3. Two-party agent 4. Transitional agent

Besides these prerequisites the manufacturer must fully appreciate the collateral responsibilities imposed upon him in using foreign agents. These were found to be:

1. The creation of an export department.
2. The provision for the requisite sales promotional work.
3. The assumption of the usual introductory losses.
4. The establishment of adequate credit extensions.
5. Special catering to the foreign market.
6. A definite allotment of production for export.

These conditions precedent, so to speak, must each be given distinct recognition as part and parcel of the foreign agency method, despite the fact that they also enter into the solution of other export methods as well.

The manufacturer must next ascertain what services he can expect from foreign agents in order that he may fill out the credit side of the foreign agency balance sheet. The study has brought to light the following services obtainable from foreign agents:

1. The provision of a selling organization abroad.
2. The rendering of "service."
3. Continuous representation on the ground.
4. The supervision of other marketing media.
5. Assistance in advertising the product.
6. The provision of a ready-made avenue of approach to the market.
7. Supplying the market and credit information.
8. Guaranteeing credits.
9. Affording immediate deliveries by carrying stocks.
10. Breaking down large shipments into small individual orders.
11. By handling allied lines, sales resistance may be reduced.
12. Assisting in properly grading prices.
13. Aiding in rectifying mistakes, settling disputes, and clearing up misunderstandings.
14. Affording the advantage of political contacts in selling the products.
15. Handling invoicing and billing.
16. Expediting entry of the goods and giving advice on customs regulations.
17. Making and carrying through claims against carriers.
18. Collecting accounts and handling funds.

19. Taking notice from banks on protesting drafts.
20. Giving information on legal technicalities of doing business in the territory.
21. At times, agents manufacture the products.

The importance of these functions to the manufacturer and the number of such services which can be obtained from one agent vary with the individual manufacturer and agent.

With a knowledge of exactly what the foreign agency method requires of him and what it offers him the manufacturer is ready to compare its net advantages with those of other systems of export distribution. Parenthetical mention has been made of the indirect exporting methods available. Direct methods of selling abroad, other than through foreign agents have been briefly described. In the absence of the possibility of showing any general invariable advantages of the foreign agency system over any other export distributive system certain conditions which would particularly favor the use of the foreign agency method have been given. It has been found that this system of distribution can be used in conjunction with other methods of export selling.

Having once decided that the foreign agency method is most suitable for his purposes, the manufacturer must select his agent. Proper selection of the agent has been shown to be absolutely essential to the successful use of this type of export distribution. The first step in selecting the agent is to obtain as much data as possible on available foreign agents. It has been found that such information can be had from the following sources:

1. Bureau of Foreign and Domestic Commerce.
2. American consuls, commercial attaches, and trade commissioners.
3. Philadelphia Commercial Musuem.
4. National Association of Manufacturers of the United States of America.
5. American Manufacturers Export Association.
6. Certain export trade journals.
7. Banks located in the United States or abroad.
8. Other American manufacturing exporters.
9. Foreign houses known to be selling the agent.
10. Foreign trade directories, the reporting agencies, Dunn and Bradstreet, and the Pan-American Union.

The nature of the information furnished by the more important of these sources of information has been fully described. It is, of course, not contemplated that the manufacturer need exhaust the facilities of all of these agencies before culling his lists. The manufacturer must be guided here, as elsewhere, by his good common sense. However, it is better to err in the direction of duplication of information than in the direction of insufficiency of data.

On the basis of this information, the agency list must be sifted down, by a process of elimination, to the most desirable agent. The principal factors to be considered in this selective process have been found to be as follows:

1. The agent's character.
2. The capability of the agent.
3. The financial status of the agent.
4. The agent's reputation and standing with the trade.
5. The lines the agent handles.
6. The agent's sales policy.
7. The location of the agent.
8. The trade group to which the agent belongs.
9. The agent's nationality.
10. The political contacts which the agent has.

Every care should be taken to ferret out these facts from the information available and to weigh them in the light of the future as well as the present. Where this process uncovers several foreign houses apparently equally desirable, a further special investigation of them should be made. This will usually show one of them to have the better of the rest. At times special circumstances may remove the necessity of such detail investigation and culling of lists, but it should be remembered that "short-cuts" are usually dangerous.

Having located the desired foreign agent, it has been shown that it is often necessary and always desirable to sell the agency to the agent. Sincerity of purpose, clarity of exposition, moderation and fairness, backed with sympathetic understanding of the agent's position and problems will lend force to the approach.

The approach, itself, may be impersonal or personal. The

latter method has been found preferable except where the limited volume of possible business would not justify the greater expense it involves. In either case the proposition may be put squarely before the prospective agent for his acceptance, or he may be approached in an indirect manner. The choice here depends much upon the individual circumstances.

In selling the agency proposition the arguments should be carefully marshaled and checked for completeness, accuracy and fairness. A good attack upon the agent would include a pointed exposition of the manufacturer's organization and standing, his line of products, the "service" he is ready to render, and the general policies he follows. It must always be kept in mind that the prospect must be convinced that the agency offers reasonable opportunities for substantial profits.

Once the agent has accepted the representation, it has been found desirable to set down the terms and conditions of the agency in a written agency agreement. This will avoid later misunderstandings. The agency contract has its *raison d'être* in the promotion of sales. It should be clearly drawn, complete in content, equitable in its requirements, well-balanced in construction, and in all respects legal. Certain basic provisions have been found essential to most all well-drawn contracts. These include provisions granting the agency and describing its nature, defining the territory of the agent, determining the duration of the contract, establishing the compensation due to agent, allotting the advertising burden, governing the handling of competitive lines, reciting the selling efforts which the agent is expected to put forth, and providing for the cancellation of the agreement. These clauses occurred regularly in the contracts examined by the writer. Direct sales clauses, indirect sales clauses, and price-change clauses were found less frequently. The writer however, believes them to be essential to all well-drawn contracts. The assignability, posthumous, and obligating-the-manufacturer clauses were found only exceptionally in the contracts read by the writer. Unless the peculiar circumstances of a particular case argue strongly against it, it appears to be highly advisable to insert them in agency agreements. Many other clauses, the necessity of which varies with the individual agency, have been enumerated.

The agreement should be drafted by the export manager in conjunction with the credit manager, the treasurer and the legal counsel of the company. It should be submitted to legal experts in foreign agency contracts for review. Such contracts should be revised periodically as required by changing conditions.

The individual manufacturer, having a large chain of foreign agencies, may find it desirable to operate under a standardized agency contract. Even here, however, it has been found necessary to vary the terms somewhat in order to meet special market conditions in certain countries. It is also maintained that manufacturers in a closely related group of lines could standardize the basic provisions of their agency agreements in large part. Such a step would make for better drafted clauses and uniformity of practice. But further than this standardization can not be successfully carried due to the vital differences in the character of the manufacturer, the product, the agent and the market as between individual foreign agencies.

Much has been said and written regarding foreign agency contracts but as yet no comprehensive survey of the contents of agency agreements actually in use by American manufacturers has ever been published. Believing that such a survey would uncover facts of interest and value to every manufacturing exporter, whether just about to enter upon direct exporting or not, by placing before them the status of export practice in such matters as found in related groups of commodities, the writer has analyzed by commodity groups, eighty-two foreign agency agreements. The outstanding characteristics of each group, their general defects, and actual contracts illustrative of each group of agreements have been given. The results do not need to be reiterated here as they have already been given in summarized form in preceding chapters.

The distinct differences in the characteristics of the various groups of agreements are due primarily (*a*) to the fundamental variations in the nature of the groups of commodities, and (*b*) to the difference in the beliefs and policies of the respective groups of manufacturers regarding agency agreements. Variations between individual agency contracts in any one group are caused primarily by differences in the beliefs and policies of individual

manufacturers respecting agency contracts. Other contributing causes of lesser importance are the fact that the individual contracts were used for many different markets, the consequent varying market conditions effecting differences in individual agreements, that the types of agents covered by the contracts varied, and that differences in the character of a few individual products in any one group occur at times. It has been further shown how foreign agency agreements in general vary in their terms due to the varying market conditions as between different countries. All this emphasizes the fact that the manufacturer must carefully study the peculiar conditions of his own agency situation and build his agreements accordingly.

Having secured the agent and having gotten his signature upon the agency contract, the manufacturer must follow through with an intelligent program of cooperation with the agent. The manufacturer must lend every possible assistance to the agent's efforts. This does not so much imply abundant, as it does intelligent, cooperation. It has been found that dealer helps can be used effectively in assisting the agent to expand his sales. These are found in a great variety of forms. Their effective use depends much upon convincing the agent of their efficacy and upon their proper adaptation to market conditions and coordination with the advertising and selling plans of both the manufacturer and the agent. The manufacturer may also aid the agent by conducting direct sales promotional work. Such general appeals to users and to consumers may take the form of newspaper and periodical advertising, circularization, consumer literature, samples and the many other forms of sales stimulation applied to users and consumers. The agent can also be materially assisted by the manufacturer's advice and guidance. He should be given full instructions and education regarding the product. Dealer and consumer selling arguments should be placed in his hands. He should be assisted in working out local advertising and sales campaigns. Members of the manufacturer's staff can render the agent valuable aid in personally instructing the agent in the technical and selling features of the product, either at the manufacturer's plant or in the foreign field. It is imperative that the manufacturer realize that the more effective cooperation he lends the agent, the greater their mutual profits.

The successful use of the foreign agency method of distribution by American manufacturers depends much upon:

1. A careful study of whether the foreign agency system is the best form of approach to the market in question.
2. Painstaking selection of the foreign agent.
3. Thoroughly selling the representation to the foreign agent.
4. Drawing up an equitable, clear and complete written agreement governing the terms of the agency.
5. Intelligent, unstinted cooperation with the foreign agent.

APPENDIX A

INFORMATION SHEET ON FOREIGN AGENTS—FOR FILES BUREAU OF FOREIGN AND DOMESTIC COMMERCE

World Trade Directory Report

1. Name.....
2. Address.....
   (Number) (Street) (City) (Country)
3. Classes of goods.....
   (State goods handled, segregating in detail goods imported, exported or manufactured)
4. Character of business (check): Jobber.... Wholesaler.... Retailer.... Manufacturer.... Importer.... Exporter..... Commission Merchant .... Sales Agent....
5. Buys chiefly: Domestic.....Foreign.....
   Imports on: Own account...., commission...., on consignment ...., direct importer....
   (State countries and proportions from each)
6. Indicate relative size of concern (check): Very large.... Large.... Medium.... Small....
   (Consider relative volume of business done by firm in its community)
7. Language of correspondence..... { Code address..... / Code used.....
   (Corporation, partnership, etc.) (Year established)
8. Organization.....
   (Country where organized)
   .....
9. Head office.....Branch houses.....
   (Location) (Location)
10. Traveling representatives.....
    (Number) (Territory covered)

Confidential Information

11. Representatives in U. S.....
    (Name) (Address)
    .....
    (If purchasing agent, so state)
12. References: (*a*) Bank.....
    (*b*) Trade.....
    .....
    (Give references in U. S. whenever possible and American references abroad)
13. Capital.....Volume of business.....
    (Paid in) (State currency) (Annual sales)
    .....Number of employees.....
    (State currency)

14. Managers or partners (name, title, age, nationality):.....
.....
15. Who controls the capital stock (name, address, nationality)?.....
.....
16. Agents for.....
(State names of firms) (If exclusive, so state)
17. Is firm favorable to American trade?.....
18. Indicate general reputation of concern.....
19. To what extent does this firm protect its stock and plant by fire or other insurance?.....
20. Date of report.....Source of information.....
(Name and station of consul, agent, etc.)

APPENDIX B

INFORMATION REPORT ON FOREIGN AGENTS—SENT TO INQUIRERS, BUREAU OF FOREIGN AND DOMESTIC COMMERCE

DEPARTMENT OF COMMERCE
Bureau of Foreign and Domestic Commerce
Commercial Intelligence Division
Washington, D. C.

This report, compiled by the American Consular Service, is furnished at your request and without guaranty or responsibility on the part of this Bureau or the Consular Bureau.

This report is valueless as credit information. It is purely sales information to indicate prospective buyers of American goods abroad and the potential volume of business to be expected from them. Credit information should be obtained from the recognized mercantile agencies, banks, and other standard sources.

Report on.....
Address.....
Classes of goods.....
Language of correspondence.....Code address.....
Character of business: Wholesaler.... Retailer.... Commission merchant...
Manufacturer.... Importer.... Exporter.... Agent.... Forwarder..
Buys chiefly: Domestic.....Foreign.....
Imports on: Own account..... Commission..... Consignment.....
Organization.....Established.....
Branch houses.....
Traveling representatives.....
Representatives in U. S.....
Financial references.....
.....
Stated capital..... Annual sales..... Number of employees.....
Date of this report.....
Manager or partners.....
Capital stock controlled by.....
Agents for.....
Relative size of concern.....
To what extent does this firm protect its stock and plant by insurance?.....
.....
General reputation.....
General remarks.....
.....

APPENDIX C.

Information Folder on Foreign Agents, Philadelphia Commercial Museum

(Obverse Side)

BUSINESS CLASSIFICATION		LINES HANDLED	
Importer	Exporter	General Merchandise	
Merchant	Wholesale Retail		
Manufacturer			
Representative	Commission Agent		
Stock Company	Limited Liability Company		
Public Utility Company	Limited Partnership		

SPECIAL INFORMATION ON AMOUNT OF CREDIT ON INQUIRY NUMBER

PRINCIPAL OFFICE		BRANCHES	
FOUNDERS	DATE	SUCCESSORS TO	SUCCEEDED BY

OFFICE AUTHORITIES	SEARCH MADE BY	PERSONAL OR DIRECT STATEMENTS (DATES)			
		REQUESTED	RECEIVED	REQUESTED	RECEIVED

PHOTOGRAPHS RECEIVED

CLASS	LANGUAGE	CORRESPONDENTS, REFERENCES, ETC., WRITTEN TO	DATE REQUESTED	DATE RECEIVED	DATE REQUESTED	DATE RECEIVED

(Reverse Side)

DATE OF INQUIRY	DATE RECEIVED	NAME AND ADDRESS OF INQUIRER	REQUEST NUMBER	DATE ACKNOWLEDGED	DATE PART-ANSWERED	DATE FULLY ANSWERED

APPENDIX D

FOREIGN AGENCY CONTRACT— NON-MECHANICAL SPECIALTY

MEMORANDUM OF AGREEMENT made this (.....) day of July, 1924, between the "X" Manufacturing Co., New Haven, Connecticut, U. S. A., hereinafter mentioned as the Manufacturer, and Messrs. "Y" Importing Co. of Havana, Cuba, hereinafter mentioned as the Agent.

The Manufacturer agrees to give the Agent the exclusive agency for the Republic of Cuba, the commission arrangement to be as follows, commissions payable only after shipment of order has been made.

(.....)% on all ("*A*" *products*)
(.....)% on ("*B*" *products*)
(.....)% on ("*C*" *products*)
(.....)% on ("*D*" *products*)
(.....)% on lines not mentioned above.

The Manufacturer reserves the liberty to decline the execution of any order if the prices or terms are unsatisfactory.

The Manufacturer agrees to furnish the Agent with a range of samples but said samples must be sold for the Manufacturer's account not later than one year's time after being received, or before becoming shop-worn.

The Agent agrees not to sell in or take orders from the above market for any other maker's (*products*) either American or European.

It is understood by the agent that quotations made by the Manufacturer are subject to change without notice.

This contract to go into effect immediately and to continue for one year and thereafter terminable upon 60 days' written notice by either party.

.....
Manufacturer

.....
Agent.

APPENDIX E

FOREIGN AGENCY CONTRACT— NON-MECHANICAL SPECIALTY

STANDARD AGENCY CONTRACT
AGREEMENT
between

THE "Y" IMPORTING COMPANY of (*location of agent*).....
(hereinafter referred to as the AGENTS)
and
THE "X" MANUFACTURING COMPANY of (*location of manufacturer*)..
(hereinafter referred to as the manufacturers)

.....

— — — — —

In consideration of the granting by The "X" Manufacturing Company of the exclusive agency for sales of its (*products*) in (*territory*) during the existence of this contract, (*The "Y" Importing Company*) accept this agency guaranteeing every reasonable effort to promote mutual interests.

The manufacturers agree:

1. To sell their products to (*the agents*) at a discount of (.....) from the list prices shown in their current export catalogs on (*products*), these quotations being f.o.b. (cars) (steamer) Boston or New York City, U. S. A. These prices payable in U. S. gold are subject only to such advances as are made to foreign trade in general.

2. Not to sell to any other firm in the above territory at a better discount than (....) on (*products*) without the expressed permission of the agents, and to credit (....) to the agents on such direct consummated sales, commission payable to the agents after payment on such direct sales is received by the manufacturers.

3. To grant (*the agents*) terms of (.....) or a cash discount of (.....) for payment within ten days from date of invoice on such orders as are accepted by the manufacturers.

4. To allow (*the agents*) the privilege to solicit orders for the "X" Manufacturing Co. in the above territory at a maximum time of (.....) days sight draft attached to bill of lading, it being clearly understood that the manufacturers are in all cases to be the sole judges of credits, and such orders are only to be taken subject to the acceptance of the manufacturers.

5. To cooperate in every possible way in the matter of sales assistance, propaganda material, samples, etc., free of charge, not to exceed (....) in value of the total amount of sales in the year in which such cooperation is given. Advertising matter and samples are to be delivered f.o.b. steamer New York, and it is understood that the manufacturers assume no charges beyond the f.o.b. point.

(*The Agent*) agrees:

1. To give every preference to the sale of the products of The "X" Manufacturing Company, and (to refuse to act as agents for) (or) (in any way to handle) the products of any competing manufacturer.

2. To sell or purchase for its yearly account the net amounts shown below, viz.:

From	Jan.	1st,	to	Dec.	31st,	($	)
"	"	"	"	"	"	($	)
"	"	"	"	"	"	($	)
"	"	"	"	"	"	($	)
"	"	"	"	"	"	($	)

These sales are understood to be actual consummated sales either to (*the agents*) or firms satisfactory to the manufacturers.

3. It is understood that either party shall have the privilege of cancelling this entire agreement by giving to the other six months previous notice in writing, and that during such six months all the terms of this agreement are to be in force.

Regardless of which party gives notice of cancellation the agents are to refrain from selling competing products for a period of six months from the termination of this agreement and the manufacturers are to pay to the agents (....) of the net amount of their paid sales of (*products*) in the territory previously noted during this six months' period. This is limited, however, to (....) of the net amount of paid sales during the last six months in which the entire agreement was in force.

4. It is furthermore understood that in case of failure or re-organization of (*the agents*) this agreement will stand void and is to be re-instated with the successors only if mutually convenient.

5. The failure of the agents to reach the amount of sales or purchases stated shall automatically cause the cancellation of this contract, unless otherwise the default be waived by the manufacturers in writing within thirty days from the end of the year in which the failure occurs.

6. It is expressly understood that in order to give The "X" Manufacturing Company the right and opportunity to pass on or to limit credits, any

and all orders given to the manufacturers by (*the agents*) either for purchases by the agents or by dealers through them, of the manufacturers' products, shall be subject in each case to acceptance by the manufacturers.

Witness..... .....

Witness..... .....

Witness..... .....

Witness..... .....

Date..... *The "X" Manufacturing Company*..

.....

President.

APPENDIX F

FOREIGN AGENCY CONTRACT— NON-MECHANICAL SPECIALTY

This agreement made and entered into this (*date*) between the "X" Manufacturing Co., a corporation organized and existing according to the laws of the State of New York, U. S. A., and having its principal office at (*location*) party of the first part, and the firm of "Y" Importing Co., (*city*) Spain, party of the second part, witnesseth:—

Agency Period

First—The "X" Manufacturing Co. agrees to appoint "Y" Importing Co. its sole and exclusive selling agent for its (*products*) in Spain, for the period running from (*date*) to (*date*) for the consideration specified herein and subject to such conditions, provisions and limitations as are hereinafter mentioned.

Maintaining Salesroom and Organization

Second—(*The agent*) agrees to maintain in the city of Barcelona, a complete sales and sample room for the goods of the (*manufacturer*), said sales and sample room to be maintained during the entire life of this agreement. Further, (*the agent*) agrees to cover the principal cities of the territory by a salesman with sample lines of the (*products*) at several intervals during the life of this agreement, and to use its best efforts to further the sale of such goods, by this and any other means which in the opinion of the (*manufacturer*) may not be considered as detrimental to the continued sale of its products.

Commission Agreement

Third—(*The manufacturer*) agrees to pay (*the agents*) commissions on all (*products*) business which the (*manufacturer*) knowingly receives from Spain during the life of this contract whether such orders may come:—

A. Direct from (*the agent*).
B. Direct from the customers in the territory,
C. Or, from any other source which the (*manufacturer*) knows will result in the shipment of such goods to Spain.

Commission Basis and Rates

Fourth—The basis upon which the (*manufacturer*) is to pay (*the agent*) commissions is as follows:—

Note.—A copy of the current list price schedule and the discounts therefrom is attached to and made a part of this contract only for the purpose of showing upon what basis commissions are paid.

PRICE

Fifth—It is further understood and agreed that such numbers one and two jobbing price schedules are subject to change at the option of the (*manufacturer*) and upon written or cabled notice given by (*the manufacturer*) the (*agent*) agrees to take orders on said new schedules after receipt of such notification.

PAYMENT RATES

Sixth—(*The manufacturer*) agrees to pay commissions, when earned, to (*the agent*) at intervals of three months on such business as may have been done during such periods, but only upon such business as the (*manufacturer*) has already received its payment therefor. Commissions are paid only on invoice value of goods, do not include freight, insurance or similar charges incident to the transportation or landing. Dates of payment are to be April 1, 1923, and the first day of each third month thereafter.

Seventh—It is understood and agreed that all samples and selling aids which (*the agent*) may have on hand unpaid for, and such samples as may be furnished them in the future will remain the property of the (*manufacturer*) and are to be accounted for or returned by (*the agent*) upon demand made by the (*manufacturer*). In case any of such goods are not accounted for they are to be paid for by (*the agent*) at the lowest current number one price of the (*manufacturer*). Whenever any of such goods are sold, regular commissions are to be paid by the (*manufacturer*) on same. (*The manufacturer*) agrees to pay transportation charges on shipments of samples; however, all other charges incident to landing or custom house fees are to be borne by (*the agent*).

MANUFACTURER'S COVENANT

Eighth—It is further understood and agreed that the (*manufacturer*) is to employ no other selling agency for its line of (*products*) for the territory of Spain during the life of this agreement.

AGENT'S COVENANT

Ninth—It is further agreed that (*the agent*) will not sell, undertake to sell or become agents for any other line of (*products*) during the life of this agreement.

"B" GOODS

Tenth—(*The agent*) further agrees not to sell, undertake to sell or become agents for any (*"B" products*) during the life of this agreement, unless such articles may be the products of the (.....). The (*manufacturer*) agrees that in the event that it should bring out a line of (*"B" products*) such as is mentioned above during the life of this agreement, it is understood and agreed that (*the agent*) shall be given the option of handling same on a commission basis which will be arrived at at such future time.

Eleventh—(*The agent*) admits having knowledge that the (*manufacturer*)

manufactures (*products*) in three different grades, trade marked in the United States and foreign countries as follows:—

.....(*trade-mark*).....

and that the distinction between these three lines is thoroughly understood by (*the agent*). Further, that everything within the power of (*the agent*) will be done to prevent a wilful or careless misrepresentation by its clerks and agents and also its customers, their clerks and agents as to the qualities and names of the various grades. Furthermore, should such a confusion of qualities or trade-marks arise (*the agent*) will put forth its best efforts to clear up such confusion.

Twelfth—(*The agent*) agrees to furnish (*the manufacturer*) with a report on all customers sold in the territory of Spain during the life of this agreement, giving complete data on same as follows:—

CUSTOMER REPORTS

A—patterns sold; B—classification of customer's business; C—credit of customer; D—prices at which goods were sold; E—any special arrangement which (*the agent*) may make with customers and which it is the interest of the (*manufacturer*) to know. The granting of a pattern exclusive in any one city would be an example of a special thing of which the (*manufacturer*) should have knowledge. (*The manufacturer*) should also be advised regarding any difficulties which (*the agent*) may have with customers—price cutting, misrepresentation of goods, etc.

CREDIT REPORTS

Thirteenth—(*The agent*) further agrees to furnish complete references and credit information concerning all firms whose orders are forwarded to the (*manufacturer*) and will upon request also supply such information as may be required concerning accounts previously opened. If upon investigation the (*manufacturer*) deems the references sufficient, such orders are to be accepted, (*the agent*) written of such acceptance and the goods are to be shipped as soon as possible. If the (*manufacturer*) deems that such references are not sufficient (*the agent*) is to be notified of such non-acceptance, and upon receipt of his (*own*) authorization, the orders are to be entered and shipped upon (*the agent's*) own responsibility. The credit risk in the first case above mentioned rests with the (*manufacturer*) upon acceptance of the orders and the credit risk in the second case above mentioned rests with (*the agent*). Furthermore, (*the agent*) is to accept the judgment of the (*manufacturer*) as to whether such references are sufficient or not.

PAYMENT TERMS

Fourteenth—It is understood and agreed that the extreme prices of sale of the (*manufacturer*) to business houses in the territory are as outlined in a

special letter covering this subject. A letter covering the terms in effect at this date, is attached to this contract. Further, it is understood and agreed that the (*manufacturer*) may change its terms of sale from time to time during the life of this agreement and (*the agent*) upon receipt of such notification, agrees to work along the lines of the new basis.

Delivery Terms

Fifteenth—It is understood and agreed that (*the manufacturer's*) delivery terms are to be as follows:—F. O. B. New York City on shipments of one hundred pounds or over. (F. O. B. New York City means free on board steamer New York City). Smaller shipments than this are to be F. O. B. factory, (*location*). All claims arising from shortage, pilferage or refusal of shipments by customers are to be handled by (*the agent*). It is understood that wherever possible the (*manufacturer*) will lend such aid as is practical to clear up such difficulties.

Supervision

Sixteenth—It is expected and agreed that (*the manufacturer*) may have its representatives call upon its selling agent (*location*) several times during the life of this contract for the purpose of looking over the work being done to see that all terms of this contract are being carried out as per agreement. At such times (*the agent*) agrees to give all reasonable assistance.

Discontinuance Notice

Seventeenth—It is mutually understood and agreed that at least two months notice in writing shall be given by either party of this contract in case said contract is to be discontinued at the end of this contractual period.

Eighteenth—It is mutually understood and agreed that, should the volume of business arising under this agreement prove mutually satisfactory and all provision of this contract have been satisfactorily carried out, (*the agent*) is to have the option of a renewal of such agreement along somewhat similar lines for a further period, such new agreement to be changed, modified or unchanged at that time in accordance with conditions which may then exist, except the rates of commission outlined above.

It is further agreed that this contract shall be deemed as having been executed and delivered within the State of New York and the interpretation of the construction of same shall be according to the laws of the State of New York.

In witness whereof the parties have hereto set their hands and seals this

(.....) day of (.....) 1923.

(Signed) (Signed)

.....

APPENDIX G

FOREIGN AGENCY CONTRACT— MECHANICAL SPECIALTY

AGREEMENT made the thirtieth day of April, one thousand nine hundred and twenty-four, between "X" Manufacturing Company of . . . . (*City*). . United States of America, hereinafter called the principals of the one part and the firm of "Y" Importing Co., Basel, Switzerland, hereinafter called the representatives of the other part.

1. In consideration of the appointing by the principals of the said "Y" Importing Company as their exclusive representatives for Switzerland, the said representatives agree and undertake with the principals to conduct and extend to the utmost of their ability the sale of the products and manufactures of the principals.

2. During the representation hereby constituted the representatives agree not to accept any other representation from any other person or firm whether manufacturing or mercantile who may be engaged in the same line of trade as the principals and neither to buy or sell any such similar goods manufactured by any others than the principals.

3. To the mutual advantage of both principals and representatives, the said representatives agree to at all times carry a stock of the principals' products in their warehouse in Switzerland, said stock of products to be comprised of kinds and sizes, constantly required by Swiss customers.

To establish the aforesaid stock the representatives agree to tender the principals an order for one thousand pounds of ("*A*" *products*) and ("*B*" *products*) of various sizes as stipulated by representatives.

This agreement is contingent upon the placing of the above stock order for the convenience of Swiss customers, and the replenishing of same from time to time as it is sold to customers.

4. Terms of payment:

The representatives agree to pay for all products purchased from the principals on the United States dollar basis, F.O.B. freight allowed to the port of New York. Payment to be made through Basel bank on ninety day draft, draft to be accepted by representatives upon presentation.

If at any time the representatives fail to pay any draft issued by principals covering merchandise shipped, the principals reserve the right to change terms of payment in any manner that said principals may deem advisable to their best interests.

5. The principals agree to extend to representatives the lowest prices prevailing on their products and at no time to sell other European representatives at lower prices than granted to the herein named representatives.

6. The principals agree to turn over for the attention and benefit of representatives any enquiries for their products emanating directly or indirectly from Switzerland.

7. The representation hereby constituted shall continue for a period of one year from date hereof, thereafter it shall cease and terminate three months after either party has transmitted to the other a notice in writing to terminate the same.

APPENDIX H

FOREIGN AGENCY CONTRACT— MECHANICAL SPECIALTY

Cambridge, Massachusetts.

Subject: Appointment as our Agent in Cuba.

Dear Mr. (Name of agent):

We hereby appoint you our Sole-Agent for the sale of our (*products*) in the Republic of Cuba, in accordance with the terms and conditions set forth in this letter.

1. It is understood and agreed that during the existence of this arrangement you will not sell or offer to the trade any (*products*) or other articles competing with the lines manufactured by our Company, or represent either directly or indirectly another company manufacturing such competing lines.

2. *Prices and Discounts:* It is understood that you are to sell our (*products*) and any other articles that we may manufacture at prices, discounts and terms which are not less than those quoted by us from time to time (unless by our consent to meet special competition or government requirements). We agree to advise you promptly of all changes in prices and discounts, but will accept at existing prices any orders you may have in hand at the time you receive our notification of a change in prices.

From the list prices shown in our catalog No. 22, our discounts are now as follows:

. . . . . .
. . . . . .
. . . . . (Discount Table)
. . . . . .
. . . . . .

3. *Payment Terms:* Our regular terms of payment for Cuba to concerns of established credit standing, and provided we have the necessary credit information at hand, are 60 days' sight draft, documents against acceptance. We shall attempt at all times to make our credit policy as liberal as the necessity demands, and to cooperate with you in making these terms acceptable to all concerned.

4. *Delivery Terms:* On orders of $1,000 or more, our terms are f. a. s. steamer regardless of whether they are shipped from Boston or New York.

On smaller orders, our terms are f.o.b. factory with cartage free to steamer at Boston or with freight prepaid to New York City should shipment be made from there. Preference will be given to the United Fruit Line with frequent sailings from Boston.

5. *Credit of Customers:* We expect you to sell only reliable customers upon whom we may depend to accept and pay their drafts promptly. Until we become acquainted with the trade, we should like to have you send with every order your own comments and such information and reports regarding the customer's credit standing as are readily available.

6. *Commissions:* The commission for your services as our agent will be 10% of the net value of all sales which are paid for. This commission will apply on all of the shipments of our (*products*) made either direct to you or direct to the trade in Cuba. It will also be paid on orders which may come to us through local export houses, destination of which are known to be Cuba. The Commission will not apply on shipments from the factory that are not marked for Cuba, or which, at the time of shipment, are not known to be destined for Cuba even though they are eventually shipped to your territory. Here as in other parts of this agreement our good faith and mutual confidence in one another must be the guiding factor, and it is understood that we are to protect your interests in every way we can in the matter of commission.

Commission will be paid by credits to your account on each shipment and will be remitted to you in accordance with instructions which you give us.

7. Your appointment to act as our Representative will be effective from the date of this letter provided your acceptance is received in writing on or before April 1st, 1924. The period covered by this agreement is one year from that date and thereafter until cancelled as provided below.

This agreement may be cancelled by either party upon giving the other party 60 days' written notice of his intention to cancel. The obligation to pay commissions ceases with the termination of this arrangement.

8. This agreement is non-transferable.

9. We agree to furnish reasonable quantities of samples and literature without charge and to give you our closest cooperation.

10. It is agreed that you will take orders from wholesalers and we authorize you to give our maximum discounts to bonafide wholesalers on initial orders, even though the total quantity may not be 50,000 pieces. We understand that when you have placed stocks with the principal wholesale houses, you will help them create the demand among the repair shops, dealers and garages.

11. You agree to keep us posted regarding competition, both as to price and quality.

12. You understand that there are many uses for (*products*) outside of the (.....) trade and in accepting this agency you agree to introduce our (*products*) to the government, railroads and all other possible customers.

The purpose of this agreement is to outline our relations to one another to avoid misunderstanding, but we appreciate that the basis for the agreement itself is mutual confidence in one another, and in offering and accepting it we both agree to care for each other's interests in every way we can during its terms.

Yours faithfully,
"X" MANUFACTURING COMPANY.
.....

APPENDIX I

FOREIGN AGENCY CONTRACT— MECHANICAL SPECIALTY

THIS AGREEMENT, made this (....) day of (.....) 19...., by and between THE "X" MANUFACTURING COMPANY, a corporation organized and existing under the laws of the State of (.....), United States of America, and having its principal place of business in the City of (.....), County of (.....), in the State of(.....), hereinafter called the "Company," and THE "Y" IMPORTING COMPANY of .....(location)..... hereinafter called the "Dealer,"

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter contained, the Company and the Dealer covenant and agree as follows:

1. The Company hereby grants to the Dealer for the term of this contract, provided that all conditions and agreements herein set forth are complied with by the Dealer to the satisfaction of the Company, the right to sell (*products*) within the following described territory: (.....).

THE COMPANY AGREES:

2. To sell to the Dealer on orders which it may approve and accept (*products*) and devices manufactured or sold by it as follows:

(*a*) ("*A*" *products, excluding certain accessories*) at current export list prices less a discount of (....) per centum (....%).

(*b*) ("*B*" *products excluding certain accessories*) at prices specifically authorized less a discount of (.....) per centum (.....%).

(*c*) ("*C*" *products*) at the net prices quoted in the current price list.

(*d*) ("*D*" *products*) at the prices quoted in the current price list less a discount of (.....) per centum (.....%).

(*e*) Chargeable features at the prices quoted in the current price list less a discount of (.....) per centum (.....%).

(*f*) Repair parts at the prices quoted in the current price list less a discount of (.....) per centum (.....%), except that theer shall be no discount on items shown in the price list as "net."

(*g*) ("*E*" *products*) at the net prices quoted in the current export paper price list.

(*h*) ("*F*" *products*) at the net prices quoted in the current special foreign price list inserts.

(*i*) (*Special products*) at prices to be established at the time sale is authorized.

All prices to be f.o.b. the Company's factory at (.....), the Company reserving the right to make shipment from any factory owned or controlled by it. Terms of payment to be as hereinafter set forth in paragraph ten.

3. To furnish at its discretion advertising folders, sales promotion material and other sales literature; to participate in the production and publication of newspaper, magazine or other kinds of publication advertising, and otherwise assist in developing the Dealership to the mutual advantage of the Company and the Dealer; the total advertising expense to be paid by the Company not to exceed, during any one year (.....) per centum (.....%) of the total of the export list price of the (*products*) sold within the Dealer's territory during the previous year.

4. To replace free of charge at any time during the life of the (*products*), any part which can be shown to have been defective in workmanship or material (abuse, accident or ordinary wear and tear excluded).

THE DEALER AGREES:

5. To use every effort to sell the greatest possible number of (*products*) under this agreement, and to prosecute the business diligently in all reasonable ways; to devote the necessary time to promoting the business and interests of the Company to the satisfaction of the Company and that, in the event the Company believes the Dealer does not fulfill its obligations in any of these respects, the Company may, upon written notice at least twenty-four (24) hours in advance, send other representatives into the territory for the purpose of securing proper development of the business, and in such case the Dealer shall be entitled to receive but two-thirds of the discounts hereinbefore specified upon any sales effected by the representatives of the Company so sent into the territory.

6. To sell and pay the Company for a volume of business of a monthly average equal to or greater than (.....) points at (.....) dollars (.....) per point based on the current export list price, divided by classes as follows:

Group A	(*"A" products*)	(.....) points.
Group B	(*"B" products*)	(.....) points.
Group C	(*"C" products*)	(.....) points.

If the Dealer fails to sell the quantity of (*manufacturer's*) product herein agreed to be taken, and to pay for the same in accordance with the terms of this agreement, then this agreement may be cancelled at any time by the

Company by giving written notice to the Dealer at his or their last known address. It is understood that the quota or volume of business to be handled may be changed from year to year as conditions change and as may be mutually agreed upon by the Dealer and the Company.

7. To employ, instruct and maintain an adequate staff of salesmen and other selling representation to sell (*"X" Manufacturing Company's*) (*products*) and devices in quantities consistent with the possibilities of the territory, and to maintain an (.....) training school where necessary and other means of carrying out the Company's policy of assisting the customer to obtain the maximum benefit through the use of the (*products*).

8. To expend each year in advertising the Company's product, in a manner agreeing with the Company's advertising policy and plans a sum not less than (.....) per centum (....%) of the total export list price of the (*"X" Manufacturing Company's*) (*products*) sold within the Dealer's territory during the year immediately preceding.

9. To sell (*manufacturer's products*) only at prices approved by the Company from time to time.

10. To pay in New York exchange all sums due the Company, at its Home Office in (.....), U. S. A., or at any other point as the Company may elect, at the time and in the manner hereinafter specified, to-wit: (*terms of sale*).

In the event that any sums due the Company should not be paid when due, the Dealer will pay interest thereon at the rate of (....) per centum (....%) per annum from and after the date when due until paid.

11. To instruct the purchaser of each (*product*) promptly in regard to its proper use and care.

12. To maintain at the Dealer's expense an adequate stock of suitable (*accessories*).

13. To maintain an adequate and trained service force satisfactory to the Company throughout the territory herein granted and also an adequate stock of service parts to be purchased from the Company, the Dealer to bear in consideration of the discount herein granted all expenses incurred in connection with mechanical service whether or not the dealer receives any compensation therefor from the user; provided, however, that when the Dealer sends its service employees to some point for instruction from a Company instructor, the Company will pay such employee's living expenses while in training, the amount to be mutually agreed upon in each instance; and further

provided, that when upon the request of the Dealer the Company sends a service instructor to the Dealer's place of business, the Company will pay the living expenses of such instructor, and the Dealer will pay the salary and transportation expenses of such instructor.

14. To make, free of charge, at any time within one year from date of delivery by the Dealer or the Company to the purchaser of any (*manufacturer's products*), any repairs not necessitated by accident or abuse. Furthermore, to replace on such (*products*) at any time and without charge, any part which shall prove defective in material or workmanship.

15. To render such service as may be necessary for the purpose of keeping all (*manufacturer's products*) in the territory herein granted in good working condition, on a reasonable scale of charges to the user in accord with the rates for such services prevailing among other (*products*) dealers in the territory herein granted.

16. To send to the Company promptly, at any point which the Company may request, on special forms furnished by it for the purpose:

(*a*) A detailed report of each sale as and when made, stating the exact price at which the sale was made, and all other information as called for by the wording of such special forms.

(*b*) At the beginning of each month a detailed report of the (*products*) delivered during the month immediately preceding, on sales made by the Dealer, showing the names and addresses of the purchasers and the styles, serial numbers and net prices to the Dealer of (*products*) if any, delivered.

(*c*) At the beginning of each month, a detailed report of all (*products*) remaining on hand unsold either in the hands of prospective buyers or in stock.

(*d*) A detailed annual inventory of the service parts stocks and supplies purchased from the Company and such other inventories as the Company may request from time to time.

17. To observe and abide by the regulations issued by the Company in its "Instructions to Foreign Offices" as now or hereafter published from time to time.

18. To permit the Company at all reasonable times to examine all records maintained by the Dealer in operating under this agreement. Also, to prepare and deliver to the Company at any time upon its request and in any event upon the termination of this agreement, copies of all lists of all users and prospective buyers of (*products*) within the territory herein granted.

19. To furnish to the Company promptly after the close of each year, and at such other times as the Company may request, a true and complete statement of the condition of the Dealer's affairs certified to by a reputable accountant.

20. To furnish to the Company a surety bond in the sum of $..... in form satisfactory to the Company to guarantee the faithful performance of this agreement.

21. That no authority has been granted and none is possessed to sign or to endorse the Company's name on any commercial paper, contract, advertisement or instrument of any nature, nor to contract any debt or enter into any obligation, either express or implied, binding the Company to the payment of money or otherwise.

22. To refrain, while this agreement continues in force, from being or becoming, either directly or indirectly, interested in any way whatsoever in the manufacture or sale of any other (*products*) which, directly or indirectly, may be considered by the Company to conflict with the sale of its merchandise.

23. That any inventions, improvements, patents or interests therein, in (*products*) or attachments therefor, made, invented or acquired by the Dealer during the continuance of this agreement, shall be disclosed promptly to an executive officer of the Company and shall, without further compensation to the Dealer immediately become and be the sole property of the Company; and that the Dealer will, upon demand by the Company, and without additional compensation, execute such applications for letters patent, assignments, transfers and other instruments as the Company may request to procure letters patent upon and to vest in the Company the entire legal and equitable title and interest in and to said inventions, improvements, patents and interests therein. The Dealer hereby waives forever in favor of the Company all trade-mark rights in any word or symbol, applied upon (*products*) manufactured or sold by the Company, and further agrees that he will not directly or indirectly obtain trade-mark registration of any such word or symbol in any country whatsoever for (*products*) parts thereof, accessories or supplies therefor, it being the intent of this agreement that the trade-mark rights in all such words or symbols shall be the exclusive property of the ("*X*" *Manufacturing Company*) in all countries absolutely.

24. In the event of termination of this agreement, to turn over to the Company without charge, all records and supplies pertaining to this Dealership, and to sell to the Company upon its demand, at the net amount paid therefor including original importation costs, any or all (*products*) and other property purchased from the Company and not resold by the Dealer, then

remaining in the possession of the Dealer such (*products*) and other property to be free from all liens, taxes and other charges and in as good condition as when delivered to the Dealer, ordinary wear and tear excepted; except where (*products*) and other property were originally shipped from the factory between (.....) and (.....) months previously, in which case a depreciation of (.....) per centum (....%) of (.....) per centum (....%) of the current export list price will be charged the Dealer; (*products*) and other property remaining unsold for a longer period will be depreciated at (.....) per centum (....%) of the export list price except when articles are not in a salable condition in which event the price to be paid will be mutually agreed upon between the Company and the Dealer at the termination of this agreement.

IT IS MUTUALLY AGREED:

25. That the rights and privileges hereby granted are personal in character and cannot be assigned or transferred by the Dealer.

26. That the Company is not responsible for delayed shipments or deliveries due to causes beyond its control.

27. That when (*products*) are sold by the Dealer for use outside the territory herein granted, or are transferred thereout within (.....) months from the date of delivery of such (*products*) (.....) per centum (....%) of the export list price of such (*products*) shall be paid by the Dealer to the Company; that when (*products*) are sold by the Company or by its agents for use in the Dealer's territory, or are transferred thereinto within (.....) months from the date of delivery of such (*products*) (.....) per centum (....%) of the current export list price of such (*products*) shall be paid to the Dealer, except that for such (*products*) sold in the United States of America the Dealer shall be paid an amount equal to the full discount on such (*products*) less the amount finally paid to the selling agent; provided, however, that any amounts so to be paid shall have been previously collected from the agent by whom the (*products*) were sold.

28. That either party hereto may cancel and terminate this agreement at any time by giving to the other party written notice thereof to be delivered personally, or by registered letter and deposited in the post office directed to the last known address of the party to be affected by such notice, at least (.....) days before such cancellation or termination becomes effective; provided, however, that if the Dealer should be adjudicated a bankrupt, or if a receiver should be appointed for the Dealer's business, or if the Dealer should make an assignment for the benefit of creditors, or if the Dealer should fail to make payments of sums due the Company at the time and in the manner hereinbefore specified, or if in the opinion of the Company the

financial responsibility of the Dealer should be impaired, or if any provision of this agreement should be violated by the Dealer, the Company shall have the right to terminate this agreement at any time without notice.

29. That the failure of the Company at any time to enforce any provision hereof shall in no way affect its right thereafter to require performance of the same by the Dealer; nor shall the waiver by the Company of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

30. That the settlement of all disputes in connection with the interpretation or the execution of this agreement shall be submitted to arbitration, in accordance with the Arbitration Rules of the International Chamber of Commerce.

31. That this agreement supersedes and annuls all other contracts and agreements between the parties hereto, and shall be construed according to the laws of the State of (.....) in the United States of America except as to the agreements undertaken by the Dealer in paragraph nine. The Dealer expressly renounces his domicile insofar as the legal interpretation of this contract is concerned or for the prosecution of any action brought thereon. The Dealer agrees that all legal proceedings with reference to this agreement, or the relations thereunder, or growing out of the same, shall be construed according to the laws of the State of (.....) in the United States of America.

32. That there are no agreements or understandings affecting this contract between the parties hereto not expressed herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands in duplicate as of the day and year first above written.

"X" MANUFACTURING COMPANY

By.....

Secretary

Approved:

....

Dealer

APPENDIX J

FOREIGN AGENCY CONTRACT— MACHINERY AND LARGE INSTALLATIONS

MEMORANDUM OF AGREEMENT entered into between The....*"X" Manufacturing Company*..... of.....(*location*)..... and....*The "Y" Importing Company*..... of.....(*location*).....

The following are the chief points forming the basis of the Agency agreement:—

1. The Agency is to be for a fixed period of three years, dating from the (.....) of (.....) 19...., and will continue to run thereafter subject to six months' notice by either party.

2. The Agency agreement will embrace all the .....(*products*)..... manufactured or sold by..... .....(*manufacturer*).....

3. Under this Agreement the Agent becomes the sole agent for the whole of .....(*territory*).....

4. It is understood that all prices quoted by .....(*manufacturer*)..... will be based on at least 10% preferential rates as compared to what they would ordinarily quote and that whatever profit ....(*the agent*).. can obtain over and above such preferential agency prices, is solely for their own account, with the understanding that the profit secured by.....(*the agent*).....is not to exceed 10% on the net C.I.F. value, except the following on which a maximum of 20% on the net C.I.F. value may be secured:
   (*"A" products*).....
   (*"B" products*).....

5. Shipping documents will be mailed direct by ....(*manufacturer*)..... to (*country of destination*) in order to make sure that documents arrive in good time, and 30 days after the material leaves New York the .....(*manufacturer*).....will draw a draft at 60 days sight on .....(*the agent*).....such draft to bear interest at current rate.

6. Advertising—It is understood that the .....(*manufacturer*)..... already advertises in certain (*Country*) Journals and that they are

also agreeable to do further advertising to a moderate extent in accordance with whatever suggestions may be put forward by . . (*the agent*) . . and approved by them.

(THE "X" MANUFACTURING COMPANY)

. . . . . .

President.

(THE "Y" IMPORTING COMPANY)

. . . . . .

. . . . . (*Date*) . . . . . .

APPENDIX K

FOREIGN AGENCY CONTRACT— MACHINERY AND LARGE INSTALLATIONS

THIS AGREEMENT made this (.....) day of (.....) 19.. by and between THE "X" MANUFACTURING COMPANY, a New Jersey corporation, having its principal office at (*location*) hereinafter called the Company, and THE "Y" IMPORTING COMPANY having its principal office at (*location*) hereinafter called the Dealer.

W I T N E S S E T H

WHEREAS, the Company is engaged in the manufacture and sale of (*products*) both for land and marine purposes and is desirous of selling same in (*territories*), and

WHEREAS, the Dealer desires the sole and exclusive right to sell and deal in said (*products*) of the company in said territories.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of One Dollar ($1.00) by each party to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The Company hereby grants to the Dealer the sole and exclusive right in and throughout (*territories*), to sell and deal in the Company's (*products*), both for land and marine purposes and agrees to make no sales in said territories except to the Dealer, except as hereinafter stated, or by mutual agreement.

2. The Dealer agrees to use its best efforts to solicit orders for, and to sell the said (*products*) in the territories aforesaid, and the Dealer, in behalf of itself and its subsidiary companies, or Companies in which the Dealer holds a controlling interest, further agrees not to purchase, sell, advertise, or assist in any manner in the sale of any (*products*) other than that manufactured by the (*manufacturer*) of any capacity less than (.....).

3. The Company will turn over to the Dealer all inquiries referring to said (*products*) which the Company may receive from prospective purchasers in the aforesaid territories, together with all such inquiries, exclusive of actual orders, now on hand. The Company will give to the Dealer, insofar as is possible, a list of all the Company's customers, or persons from whom the Company has received inquiries for such (*products*), located in the said territories.

4. Should occasion arise at any time during the life of this contract where a prospective buyer within the territories aforesaid prefers to deal with the Company direct, the Company shall quote to such prospective buyer, if he be a user, current export consumer prices plus 5% f.a.s. New York, and if he be a dealer or commission house, current export dealers prices plus 5% f.a.s. New York; in the first case reserving to the Dealer ten per cent (10%) and in the second case five per cent (5%) of such current export prices to be credited to the Dealer upon receipt by the Company of full payment from the customer, and the Dealer is to be notified of such quotation.

5. The Dealer shall be entitled to the Company's best export agents discount on current export prices f.a.s. New York, on all sales made to it.

6. Full payments for such (*products*) ordered by the Dealer shall be made in United States gold or its equivalent by the Dealer net cash against dock receipt, showing delivery F.A.S. New York, less a discount of two per cent (2%) for such cash payment, unless other terms of payment are mutually agreed upon. Invoices shall be for best current export agent's prices f.a.s. New York. In the event of shipment being deferred, for any reason for which the Company is not responsible, any special material or apparatus purchased or manufactured, other than that included in the Company's standard plants, becomes immediately due for payment.

7. The Company agrees to deliver all (*products*) in exact accordance with the Dealer's orders, providing same are formally accepted by the Company, and such (*products*) are hereby guaranteed, for a period of fifteen months from date of shipment from (*factory location*), to operate to full capacity where erected and operated according to instructions furnished by the Company, and shall embody first-class workmanship and material and all latest improvements. The Company will furnish with each (*product*), whenever required, proper installation and operating instructions in writing or print.

8. The Dealer agrees to specify to the customers that all such (*products*) are furnished by (*manufacturer*).

9. In case any of such (*products*) shall prove, within fifteen months from date of shipment from (*factory location*) to be defective in any respect or part due to poor workmanship or material, the Company will replace any such defective parts free of charge, f.a.s. Vessel, New York.

10. No order given by the Dealer and accepted by the Company in accordance herewith is subject to cancellation unless the Company shall be in default on delivery.

11. Strikes, fires, acts of God or any public enemy or restraint of princes or governments, or moratoriums or other contingencies beyond the control of the parties hereto shall be sufficient excuse for any delay in delivery and shall extend the time therefore until the interference is removed.

12. The Company will, at its own expense, supply the Dealer with all catalogs, literature, price lists and illustrations of the (*products*) and such other advertising material as the Company may issue, from time to time. The Company will, further, list the Dealer's name and address as its exclusive agent for said territory, in all advertisements placed by the Company in publications circulating in said territory. The Dealer will advertise the Company's products in local publications to such extent as is warranted by the expected volume of business.

13. The Dealer shall have the right to designate a person who shall be employed by the Company, at a reasonable compensation to be paid by the Company. Such employment shall be of such nature as will enable the person so designated and employed to learn the details, installations and operation of the said (*products*). Such employment shall continue during such period as in the opinion of the Dealer shall be necessary to enable such person to learn and become familiar with the details, installation and operation of the aforesaid (*products*) and with the construction thereof, but in no event shall such employment continue for more than one (1) year without the consent of the Company.

14. The Company shall have the right to send to the Dealer's territory an engineer for the promotion of sales in the said territories. The sending of such engineer shall be at such time as may be consented to by the Dealer, it being understood that such engineer is to cooperate with the Dealer in said territories in the promotion of the sales of the aforesaid (*products*). The expense of sending such engineer and maintaining him in the said territories shall be met as may hereafter be agreed upon between the parties hereto and in case the Dealer shall not deem the sending of such engineer necessary or advisable then his expense shall be paid by the Company.

15. This contract shall be in full force and effect for five years from date and thereafter so long as it is mutually advantageous and agreeable, provided however, that either party hereto may, after the expiration of five years, terminate this contract by giving to the other party, at one of its offices hereinbefore specified, six months notice in writing of its desire and intention so to do, and provided further that the Company reserves the privilege of cancelling this agreement at the end of any year from date of this agreement if the total volume of orders placed with the Company by the Dealer, and paid

for by the Dealer, does not equal the following amounts for each separate year:

First year.....$2,000.
Second year..... 5,000.
Third year..... 8,000.
Fourth year.....10,000.
Fifth year.....15,000.

16. It is understood that all orders for the Company's said (*products*), placed by the Dealer with the Company, are for resale to customers located or having office in said territories.

IN WITNESS WHEREOF the parties hereto have hereunto caused their names to be signed and their seals to be affixed, the day and year first above written.

THE "Y" IMPORTING COMPANY

Attest:

By.....

.....

THE "X" MANUFACTURING COMPANY

Attest:

By.....

.....

APPENDIX L

FOREIGN AGENCY CONTRACT— AUTOMOTIVE THE "X" MANUFACTURING COMPANY (*location*) U. S. A.

THIS AGREEMENT, made in triplicate this (.....) day of (.....) A.D., 19...., by and between THE "X" MANUFACTURING COMPANY, a Corporation organized and existing under the laws of the State of (.....), United States of North America, and having its principal office in (.....), United States of North America (hereinafter called the CORPORATION), AND THE "Y" IMPORTING COMPANY of (*location*) ....(hereinafter called the DISTRIBUTOR)

WITNESSETH:

CONSIDERATION

1. The Corporation agrees to grant the Distributor the exclusive right to sell ("*X*" *Manufacturing Company*) Motor Vehicles during the continuance of and pursuant to the provisions of this agreement, in the following described territory: (.....).

GOODS AND PRICES

2. The Corporation agrees to sell to the Distributor (for resale to Dealers or to residents in the above mentioned territory) such ("*X*" *Manufacturing Company*) Motor Vehicles as are available for shipment to said territory at prices which shall be quoted by the Corporation to the Distributor from time to time, provided the Distributor maintains such a dealer organization as in the opinion of the Corporation is necessary to thoroughly canvass and promote the sale of ("*X*" *Manufacturing Company*) Motor Vehicles in the before mentioned territory.

The Corporation reserves the right to change the prices of any of its products at any time and in case of any increase or reduction in such prices the Corporation shall not be bound to make an allowance to the Distributor upon any of its products shipped before such changes take effect.

TERMS OF PAYMENT OR FINANCING

3. For the purpose of this standard contract it is understood that all shipments must be preceded by the establishment of irrevocable letters of credit in United States dollars in favor of the Corporation in an incorporated

bank or trust company in New York, Chicago, or San Francisco—these letters of credit to be for the full amount of the order, including charges for boxing, freight, handling, insurance, etc. and it is agreed that policies or certificates of insurance shall be acceptable to the Distributor.

The Corporation will consider applications for better terms based upon the Distributor's audited financial statements, credit reports, bank references, the Corporation's past experiences, etc., but each case must necessarily be considered on its own merits.

Unless some special terms have been arranged at time order is placed, it is understood that standard irrevocable terms will apply.

TERRITORY RIGHTS

4. The Distributor agrees not to sell ("*X*" *Manufacturing Company*) Motor Vehicles outside the Territory described in Paragraph 1 without first obtaining consent in writing from the Corporation.

TERRITORY INFRINGEMENT

5. There is an obligation resting upon each Distributor to confine his sales to his own territory and not to encroach upon the territorial rights of any other Distributor or Dealer. The Corporation will use every reasonable precaution to prevent one Distributor from selling ("*X Manufacturing Company*) Motor Vehicles in any territory controlled by another, but the Corporation shall not be held liable to the Distributor for any invasion of his territory by another Distributor.

The Distributor agrees for himself and for the benefit of every other Distributor that in the event of a controversy arising by reason of any invasion of his territory by another Distributor, such controversy shall be referred to the Corporation, which shall act in the role of arbitrator between himself and the other Distributor, and that the Corporation shall make an award as such arbitrator. The Distributor agrees to abide by the decision of the Corporation in the disposition of the controversy. The Corporation assumes no responsibility with respect to such decision nor with respect to the enforcement thereof.

SALES BY CORPORATION

6. It is mutually agreed that the Corporation shall have the right at any time during the existence of this Agreement to sell direct to any person or corporation or municipality in such District, any and all models of ("*X*" *Manufacturing Company*) Motor Vehicles handled or dealt in by the Corporation; provided, however, that upon any such models so sold direct, the Distributor shall be paid a commission equal to ten per cent. of the United States list price, F.O.B. (interior point), in force at time of sale.

The Corporation reserves the right to sell ("*X*" *Manufacturing Company*) Motor Vehicles direct to the Government of any country, except municipal governments, if such Government elects to place such orders direct with the Corporation, rather than to place the orders through a Distributor, in which event the Distributor shall not be entitled to receive any discount or commission on such sales.

CHANGE IN DESIGN

7. It is mutually agreed that the Corporation has the right to make changes in design or add any improvements on ("*X*" *Manufacturing Company*) Motor Vehicles at any time without incurring any obligations on the part of the Corporation to install same in ("*X*" *Manufacturing Company*) Motor Vehicles previously purchased by the Distributor.

SALES AND SERVICE FACILITIES

8. The Distributor agrees to maintain two Trucks for demonstration and display; to maintain a place of business and a modernly equipped salesroom and service station and a sufficient number of efficient mechanics to repair and adjust ("*X*" *Manufacturing Company*) Motor Vehicles; to furnish gratis to owners of ("*X*" *Manufacturing Company*) Motor Vehicles such parts as the Corporation may replace or supply free of charge for use thereon; to adopt the service policy of the Corporation as set forth in Addendum A, hereto attached, and which constitutes a part of this Agreement.

The Distributor agrees to establish Dealers in the territory allotted under Paragraph 1 of this Agreement wherever possible and agrees to require the said Dealers to maintain a place of business and a modernly equipped salesroom and service station and a sufficient number of efficient mechanics to repair and adjust ("*X*" *Manufacturing Company*) Motor Vehicles; to furnish gratis to owners of ("*X*" *Manufacturing Company*) Motor Vehicle such parts as the Corporation may replace or supply free of charge for use thereon; to adopt the service policy of the Corporation as set forth in Addendum A, hereto attached, and which constitutes a part of this Agreement.

The Distributor agrees that he will purchase from the Corporation and maintain at his place of business a stock of new, genuine ("*X*" *Manufacturing Company*) Motor Vehicle spare parts sufficient to adequately supply all spare parts needs of ("*X*" *Manufacturing Company*) Motor Vehicles users in the territory herein-above allotted to him at all times during the term of this Agreement, the value of which stock of spare parts is to be not less than fifty Dollars (United States Currency) for each ("*X*" *Manufacturing Company*) Motor Vehicle operating in the Distributor's territory. The said parts are to be purchased from the Corporation at the Corporation's current prices and on the same terms of payment as provided in Paragraph 3 of this Agreement.

The Distributor also agrees to determine for his own business and to see that his Dealers determine for their business the sales price of such parts by adding to the total actual cost thereof only a fair, normal sales profit.

The Distributor also agrees to require his Dealers to maintain a stock of the said new, genuine ("*X*" *Manufacturing Company*) Motor Vehicle spare parts adequate to supply all needs of ("*X*" *Manufacturing Company*) Motor Vehicle users in the Dealer's territory.

The Distributor further agrees to furnish the Corporation on January first of each year a copy of his spare parts inventory, showing the parts numbers, descriptions, models and quantities of spare parts on hand at the time the inventory is taken.

USE OF THE NAME "X"

9. The Distributor agrees not to use the name ("*X*") as a part of his firm or corporate name nor permit same to be used by his Dealers without first obtaining the written consent of the Corporation and in the event that such privilege is granted, the Distributor agrees upon cancellation or termination of this Agreement to immediately discontinue using the name ("*X*") and to see that the use of the name ("*X*") is discontinued by his Dealers.

REGISTRATION OF COPYRIGHT

10. It is mutually agreed that the Distributor will not obtain or attempt to obtain in any country or territory whatsoever, during the continuance of this Agreement or any time thereafter, any right, title or interest, by registration, patent, or otherwise, in or to the trade-name ("*X*") or any combination of said name or any other trade-mark, name or designation or combination thereof, used or owned by the Corporation or in or to any other trade-marks, names or designations whatsoever used in connection with or to designate any part or parts of such ("*X*" *Manufacturing Company*) Motor Vehicles; or in or to any designs, improvements or inventions whatsoever embodied in said ("*X*" *Manufacturing Company*) Motor Vehicles or in any parts thereof whatsoever, except with the consent of said Corporation, and the Distributor hereby expressly waives any right which he may have to do so.

WAIVER

11. The failure of the Corporation to enforce at any time any of the provisions of this Agreement or to exercise any option which is herein provided, or to require at any time performance by the Distributor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or the right of the Corporation to thereafter enforce each and every such provision.

CLAIMS

12. No claims regarding errors in shipments or billing will be recognized by the Corporation unless the same are made within thirty (30) days after receipt of goods in connection with which any error is claimed. Such claims must be supported by an official survey as to condition of packing cases on arrival. The Corporation will not be responsible for any loss or damage of goods in transit.

FILLING ORDERS

13. It is mutually agreed that all orders shall be filled by the Corporation as rapidly as practicable, consistent with the requirements given the Corporation by the Distributor, subject, however, to delays caused by war, strikes, shortages of labor or material, or any other causes beyond the Corporation's control and that the responsibility of the Corporation for loss or damage to goods ordered shall cease upon delivery to the initial common carrier

All orders placed with the Corporation by the Distributor under this Agreement shall specify that the goods purchased thereunder are for shipment direct to the Distributor at a foreign destination. In the event, however, that the Distributor should require delivery to be made to his agent within the United States, for subsequent shipment by the said agent, the Distributor agrees to furnish the Corporation with a certificate from such agent showing (1) that the goods are purchased either to fill a firm order then held by such agent requiring shipment to a foreign destination, or for shipment or transportation by such agent in due course to himself or to his principal in a foreign country, or that the goods are purchased to fill future orders calling for shipment thereof by the Distributor direct to a foreign destination, and (2) that the goods will be transported to a foreign destination to the Distributor at a foreign destination in due course prior to use, re-sale or further manufacture within the United States. In the event of the Distributor's failure to comply with the foregoing provisions of this paragraph, the Distributor will become liable to the Corporation for any manufacturer's tax assessed upon the Corporation by the Government of the United States or of any state or subdivision thereof.

ADVERTISING

14. The Distributor agrees to advertise (*"X" Manufacturing Company*) Motor Vehicles every month or oftener in local newspapers and other local publications, such advertising to be relative to (*"X" Manufacturing Company*) Motor Vehicles exclusively. An allowance of fifty per cent. of the Distributor's expenditure for such advertising will be made to the Distributor by the Corporation, such allowance not to exceed fifteen dollars ($15.00),

(United States currency) for each ("*X*" *Manufacturing Company*) Motor Vehicle accepted and paid for by the Distributor under this Agreement. All claims made by the Distributor for such allowance shall be made monthly and shall be supported by original receipted bills and copies of the advertisement and other information respecting such advertisement as the Corporation may require. Dates of issue of publication in which the advertisements have been printed must not be detached from the copies of the advertisement sent to the Corporation. In case of termination of this Agreement, all claims for credit for advertising by the Distributor during the life of this Agreement must be made not later than sixty (60) days after date of notice of such termination, otherwise they shall become null and void. The object of this allowance on the part of the Corporation is to create continued and consistent advertising of ("*X*" *Manufacturing Company*) Motor Vehicles on the part of the Distributor.

DURATION OF AGREEMENT

15. It is mutually agreed that this Agreement shall remain in force until cancelled, or for a period not exceeding five years, subject to the following provisions:

This Agreement may be terminated by either party upon ninety (90) days written notice, or for any violation hereof by either party, the other party may terminate this Agreement immediately, on mailed or cabled notice, but termination shall not relieve the Distributor of any obligations or liabilities incurred prior to such termination.

The Distributor shall have no right to assign this Agreement or any interest therein without the written consent of the Corporation.

CANCELLATION

16. Cancellation or termination of this Agreement as herein provided shall immediately cancel all orders for ("*X*" *Manufacturing Company*) Motor Vehicles or parts thereof unshipped at time of notice of cancellation whether or not time for shipment has expired and shall also cancel all Dealers' Sales Agreements under this Agreement.

It is mutually agreed that in the event the Distributor is a co-partnership or is incoporated, or is a limited liability company, and disagreements of any nature shall arise between the parties of the co-partnership or the officers or managers of the Distributor Corporation whereby the Corporation deems that its interests may be imperiled, or that the particular person in whom the Corporation had special confidence to promote its interests shall sever connections with such co-partnership, Distributor Corporation, or limited liability company, or that in the event a Receiver or Trustee is appointed for the Distributor, then the Corporation at its option, may cancel this Agreement forthwith by written or cabled notice to the Distributor.

No Other Agreement

17. There are no other written, printed or verbal Agreements or understandings affecting this Agreement and no alteration or variation of the terms thereof shall be valid or binding upon the Corporation unless in writing and signed by an Executive Officer of the Corporation, as constituting this Agreement.

Interpretation of Legality

18. It is understood that this is a general form of Agreement, designed for use in countries outside the United States of North America, but is to be construed by the laws of the State of (.....), United States of North America, and that any provisions herein the performance of which would contravene the laws of the country, state or jurisdiction, where such performance must be made by the Distributor under this Agreement, shall be deemed not to be a part of this Agreement, but in all other respects said Agreement shall continue as written.

Notice

19. It is mutually agreed that any notice provided for in this Agreement must be given either by letter or by cablegram and addressed to the party upon whom said notice is served at the address given in this Agreement or to the last known address to which the Corporation or Distributor may have moved subsequent to the date of this Agreement. That proof of such letter being duly posted or filing of such cablegram with recognized and established cable companies shall be sufficient evidence of such notice.

Translations

20. Inasmuch as this Agreement is printed in three languages, English, French and Spanish, and known as Export Sales Agreement Forms "E", "F" and "S", respectively, the Corporation states the French and Spanish translations have been made by competent linguists but does not guarantee them to be exact and true translations of the English. Anyone signing any of these Agreements agrees that the English text on file in the home office of the Corporation shall control in the event of controversy as to construction or translation.

Distributor Not Corporation's Agent

21. It is mutually agreed that the Distributor is in no way the legal representative or agent of the Corporation for any purpose whatsoever except as expressly stated in this Agreement, and has no right or authority to assume or create any obligation of any kind, express or implied, on behalf of the Corporation or to bind the Corporation in any respect whatever, and the Distributor shall not use the words "agent" or "agency" or words of similar

import, in any language, in connection with the conduct of its business or in the sale of the ("*X*" *Manufacturing Company*) Motor Vehicles or products.

SIGNATURE REQUIRED

22. This Agreement shall not be valid unless bearing the duly authorized personal signature of the Distributor and also the seal of the Corporation and the signature of an Executive Officer of the Corporation, at the Corporation's Head Office in the City (.....), State of (.....), United States of North America.

Signed for the Corporation the (.....) day of (.....), 19.....

Attest: THE "X" MANUFACTURING COMPANY
(Corporation)

By.....

(Seal) THE "Y" IMPORTING COMPANY
(Distributor)

.....

Witness:

....

.....

(Seal)

The undersigned
recommends that
The "X" Manufacturing Company
accept and sign this Agreement.

....

.....

THE "X" MANUFACTURING COMPANY
(*location*)
U.S.A.

Addendum A
Referred to in Paragraph 8.

SERVICE POLICY

1. In the merchandising of Motor Vehicles the importance of "SERVICE" cannot be too strongly emphasized, for on it depends in a large measure, the success of your sales efforts. Efficient SERVICE keeps the owner satisfied and the Motor Vehicle permanently sold. Reputation acquired for prompt SERVICE to ("*X*") owners cannot but result in increased sales throughout your territory. Keeping faith with ("*X*") owners,

through rendering of SERVICE, not only from a moral standpoint, but from a purely commercial one, is good business.

2. The prospective purchaser of a Motor Vehicle contemplates purchase only because he believes it will be a profitable investment in his business and on this basis the Motor Vehicle must prove itself. Good SERVICE is undoubtedly your very best salesman as it makes the product a desirable investment. Properly handled, SERVICE is not only a necessity to the owner, but profitable to both Distributor and his Dealers. SERVICE does not imply the giving of something for nothing, but it is the willingness and ability of the Distributor or Dealer to extend consideration, courtesy, parts and labor promptly upon request and at a reasonable charge to the owner. Lacking such SERVICE the owner's investment in the Motor Vehicle is either partially or wholly unprofitable. This in turn vitally affects further sales not only to this particular owner, but others to whom his experience has become known

AMPLE PARTS STOCK

3. To give prompt and efficient SERVICE you must at all times be in a position to furnish such parts as might be necessary to recondition ("*X*" *Manufacturing Company*) Motor Vehicles in your territory. Careful attention should be paid to the ordering of parts for this purpose. You should analyze conditions in your territory so as to insure carrying in stock a sufficient quantity of parts to meet the possible requirements for a period of six months.

PARTS INVENTORIES

4. In order that the Distributor may have the advantage of the Corporation's knowledge and experience in the carrying of a sufficient stock of parts to meet the possible requirements for a period of six months, the Distributor should, without solicitation, furnish the Corporation the first of January each year, with an inventory of this parts stock and should, at the request of the Corporation, or its authorized representative, furnish inventory more frequently.

CLAIMS FOR REPLACEMENT OF DEFECTIVE PARTS

5. (*a*) Any claims to be filed with the Corporation for consideration must be filed within three months after delivery of the vehicle to the original purchaser. Such claims must completely cover the information required by the Corporation to enable prompt and proper settlement.

(*b*) The Corporation reserves the right to inspect all parts which are claimed to be defective, and to furnish new parts free of charge, or to reimburse the Distributor their costs (at price F.O.B. [interior point]) only in case the inspection proves that said parts are defective in material or workmanship.

(*c*) It is understood that the Distributor will not return parts to the Factory without written authority from the Corporation, and in such cases, the Distributor shall prepay transportation, insurance charges, etc.

(*d*) Any defective parts which have been replaced by the Corporation, or for which the Corporation has reimbursed the Distributor, will be disposed of at the Corporation's discretion.

(*e*) The above arrangement will not apply to any ("*X*" *Manufacturing Company*) Motor Vehicles which shall have been altered in any way, so as in the judgment of the Corporation, to affect their stability, or reliability or which have been subject to misuse, negligence or accident.

THE "X" MANUFACTURING COMPANY.

APPENDIX M

FOREIGN AGENCY CONTRACT— MOTION PICTURES

AGREEMENT entered into this (.....) day of (.....) 1923, by and between THE "X" MOTION PICTURE CORPORATION, of (*address*), City of New York, N. Y., U. S. A., hereinafter referred to as the "Producer", and "THE "Y" IMPORTING COMPANY" of (*location*) hereinafter referred to as the "Distributor,"

WITNESSETH:

WHEREAS, the Producer solely controls the right to distribute the motion picture productions referred to in Article "First" hereof in the territory below mentioned, and

WHEREAS, the Distributor desires to obtain the sole and exclusive license to distribute for exhibition positive prints of said productions, as hereinafter specified, throughout the territory of ....(*territory*).... hereinafter referred to as the "Territory," upon the terms hereinafter more particularly set forth,

NOW THEREFORE, IN CONSIDERATION of the mutual covenants herein contained, the parties hereto agree as follows:

First: The Producer hereby grants to the Distributor an exclusive license to exhibit, or sublease for exhibition, the specific motion picture productions hereinafter named, throughout the Territory. The license as to each such production shall be separate and shall extend for a period of three (3) years from the date of delivery to the Distributor of the first print of each such production, unless the Producer's right of distribution shall sooner terminate.

Second: The Distributor agrees to pay to the Producer, at its office at (*address*), New York City, on delivery of the first print of each production, for the license to each such production, the amount set forth as royalty in the following Schedule:

SCHEDULE

Name of Production	Star or Producer	Royalty
.....	.....	.....
.....	.....	.....
.....	.....	.....

THIRD: To enable the Distributor to exhibit each such production, and as an incident to said license, the Producer shall lease to the Distributor at least one (1) positive print of each such production and the Distributor shall accept such prints as lessee thereof, for the sole purpose of exercising said license in accordance with the terms and conditions hereof. The Distributor shall pay to the Producer, at the place above specified, on delivery of the prints, as rental for the lease of each such print, a sum equal to 3½c per linear foot for each print delivered to the Distributor. If the cost of raw stock to the Producer is increased, or a Tax imposed thereon by the U. S. Government, or on the sale or export thereof, such rental shall be increased by a like amount.

FOURTH: (*a*) The Producer shall deliver to the Distributor, as soon after prints are ordered by the Distributor as prints can be made and delivered, and the Distributor shall order in time to take on or before the 31st day of July, 1926, the number of positive prints of each such production mentioned in Article "Third" hereof.

(*b*) The Producer agrees to deliver to the Distributor, and the latter agrees to order and take the prints relating to at least one of such productions above referred to every week beginning with the 1st day of November, 1924.

(*c*) In the event that the Distributor fails to order or accept delivery of the prints of any productions at the precise rate contemplated herein, the royalties on such undelivered productions shall become immediately due and payable. In the event that the Distributor has not indicated the order in which such productions shall be delivered, the Producer shall decide the order of delivery thereof.

(*d*) The Producer shall deliver, and the Distributor shall accept delivery of all prints at the office or laboratory of the Producer in New York City, U. S. A.

FIFTH: The Producer shall lease to the Distributor such number of additional prints of each production if ordered by the Distributor during the term of the license herein contained as the Producer shall deem reasonable for the requisites of the Territory, provided the negative is in existence, is in the control of the Producer, and is in proper condition to make such prints, as soon after such additional prints are ordered as the same can be delivered, and the Distributor agrees to pay to the Producer the sum set forth in Article "Third" hereof, as rental for such additional prints, upon the delivery thereof. Delivery shall be made in the manner that delivery was made upon the original print and upon the same terms and conditions as to exhibition and distribution.

SIXTH: In the event that any of the prints or parts of prints delivered to the Distributor shall become lost, stolen or accidentally destroyed, the Pro-

ducer, upon receipt of an affidavit of the Distributor satisfactory to the Producer, setting forth the circumstances of such loss, shall furnish to the Distributor a print or part of print in replacement of, and as a substitute for, such lost print or part of print, provided the negative is in existence, is in the control of the Producer, and is in proper condition to make such print or part of print, as soon after the same is ordered as it can be made and delivered, and the Distributor agrees to pay to the Producer the sum set forth in Article "Third" hereof as rental for such print or part of print upon delivery. In such case such print or part of print shall be delivered in the manner that delivery was made upon the original print, upon the same terms and conditions as to exhibition and distribution.

SEVENTH: Every print delivered to the Distributor under this agreement is to be returned to the Producer by the Distributor, at the Producer's office in New York City, upon the expiration of the license herein contained, provided it has not been lost, stolen or accidentally destroyed, in which case the Distributor is hereby required to supply promptly affidavits satisfactory to the Producer covering the cause of its destruction or loss, or in default thereof the Distributor shall pay to the Producer a sum equal to the sum set forth in Article "Third" hereof for each foot of such print originally delivered to the Distributor.

EIGHTH: It is understood and agreed that the titles and sub-titles of the prints furnished to the Distributor shall be in the English language.

NINTH: The Producer shall supply to the Distributor first-class lithographs printed in the English language, relating to the productions herein referred to, and other advertising accessories at the usual rates charged for such advertising matter, in such quantities as may be required by the Distributor, provided the Producer has the same in stock, delivery to be made at the office of the Producer in New York City, and payment therefor to be made at the time and place of delivery. The Distributor agrees to use only such newspaper advertising and publicity matter as shall strictly conform to the form of announcement, including substantive matter and relative size of type, contained in advertising matter furnished by the Producer relating to such production, and shall prominently advertise and announce each production licensed hereunder, as a "('*X*') Picture," and not otherwise; and the Distributor shall obtain an agreement from each of its sub-lessees similar to that contained in this sentence.

TENTH: Any claim by the Distributor arising hereunder shall be presented to the Producer for adjustment, by written notice served by registered letter addressed to the Producer at its principal office in New York City,

which said registered letter shall be mailed within twenty (20) days after the occurrence of the act, event or default upon which said claim is based; said notice shall set forth in detail the time when and place where said claim arose and the nature and substance of the claim asserted. The giving of such notice in the manner and within the time hereinabove described and limited shall be a condition precedent to the maintenance of any action or proceeding upon such claim. No action or proceeding shall be commenced, prosecuted or maintained until the expiration ninety (90) days from the date of the act, event or default upon which the claim is based, and no such action or proceeding shall be maintained on such claim unless commenced within nine (9) months after the date of such act, event or default.

ELEVENTH: The Distributor agrees and guarantees that it will not wilfully or knowingly permit any of the prints furnished by the Producer to be copied or duplicated or shown outside of the Territory, and shall immediately notify the Producer of any infringement of copyright of the productions delivered pursuant to this agreement or of any other productions of the Producer, in the Territory.

TWELFTH: The Producer agrees that it will not exhibit any of the productions delivered to the Distributor hereunder, in said Territory, nor will it cause or wilfully or knowingly permit the same to be exhibited therein.

THIRTEENTH: The Producer hereby grants to the Distributor the right to enjoin any showing of any of the productions accepted by the Distributor hereunder by any unauthorized party in the said Territory, and to sue for damages therefor; but the Producer shall in no way be liable for the acts of or expenses incurred by the Distributor in relation thereto.

FOURTEENTH: The Distributor agrees in no event whatsoever to exhibit, or cause to be exhibited or distributed in the said Territory, any print of any motion picture production the rights of exhibition of which are controlled by or derived from the Producer in the said Territory, unless the Distributor has a written lease or license to exhibit the same in the Territory from the Producer.

FIFTEENTH: In the event of the passage of any law prohibiting the importation into the said Territory of films manufactured in the United States, or the exportation into said Territory from the United States of motion picture film, this contract may by either party hereto be abrogated, cancelled and annulled as to future deliveries as of the date of the enforcement of said law, but the Distributor shall be entitled to distribute all motion pictures delivered prior to such date of abrogation or cancellation, as if this contract had not been abrogated, cancelled or annulled.

SIXTEENTH: This contract being signed and entered into in New York, it is agreed that the law to be applied to any matter arising hereunder shall be that of the State of New York and of the United States of America.

SEVENTEENTH: The Distributor agrees not to sell any of the prints delivered hereunder, but may lease the same to responsible purchasers of exhibition rights for the said Territory for a period not exceeding the period of the license herein contained.

EIGHTEENTH: It is understood and agreed that the Distributor is not the representative of the Producer in any manner whatever, and the Distributor agrees not to so hold out, either by advertising or otherwise, to the public or to any person whomsoever, and that the Producer shall not be liable for or bound by any representation, act or omission whatever of the Distributor.

It is further expressly understood and agreed that this agreement in no wise constitutes a partnership between the parties hereto; this agreement is declared to be personal on the part of the Distributor and it is agreed that the Distributor shall not be permitted to assign this agreement without the written consent of the Producer.

NINETEENTH: The Producer shall not be liable in any way for failure or delay in making delivery of the prints of any production, by reason of accidents, labor troubles, fires, delays of common carriers, orders of court, ruling of censors, delays in completing or delivery to the Producer of negative or positive prints of any production, or destruction of positive or negative print thereof, or any other cause not within the control of the Producer whether of a similar or any other nature.

TWENTIETH: The covenants herein contained shall bind and enure to the benefit of the parties hereto, their legal representatives, assigns and successors.

TWENTY-FIRST: In the event that the Distributor makes default—

(*a*) in paying to the Producer any of the sums herein agreed to be paid, at the time said sums are due and payable;

(*b*) in exhibiting or permitting the exhibition of prints or duplicates of the prints of the Producer delivered hereunder outside the Territory;

(*c*) in complying with any of the provisions of Articles "Fourth," "Seventh," "Fourteenth," or "Seventeenth" hereof;

(*d*) or should the Distributor cease doing business for thirty consecutive days at any time or assign its interest in this agreement by either voluntary or involuntary act, or should the Distributor file a petition in bankruptcy, or be adjudged a bankrupt;

Then on the happening of any of one or more of these defaults the Producer shall have the right to withhold delivery of any or all prints until such default has been cured or may at its option terminate this agreement and the license hereby granted by giving ten days' notice in writing addressed to the Distributor or its Agent, declaring its intention so to do, and in the event of such termination the Producer may seize and take, wherever found, any or all prints theretofore furnished by the Producer to the Distributor, and the Producer may also enjoin in any court or courts having jurisdiction, the use of all prints furnished by the Producer to the Distributor hereunder, and the Producer shall retain to its own use all moneys heretofore paid to it by the Distributor under this agreement.

The rights and remedies hereinbefore last given to the Producer are in addition to and not in lieu of or in limitation or in derogation of the rights and remedies in this agreement otherwise granted or by law or in equity created and vested in the Producer, and any waiver by the Producer of any breach by the Distributor, whether such waiver be direct or implied, shall not be construed to be a continuing waiver or a waiver of or consent to any subsequent breach on the part of the Distributor.

TWENTY-SECOND: The Distributor agrees to deposit the sum of (.....) Dollars ($), to be held and applied by the Producer for the following purposes:

The said sum shall be held by the Producer throughout the period covered by any and all contracts now in force or hereinafter to be entered into between the parties hereto, for the distribution of motion pictures in the Territory. Should the Distributor default in payment of any sum due under any of said contracts, or should the Distributor breach any of said contracts in any other respect, then if such default is not cured, or if complete satisfaction of the Producer's claim arising out of such breach is not made, within ten days after the date on which the Producer shall notify the Distributor by cable or otherwise of such claim or demand for payment, the Producer shall have the right at any time thereafter and without further notice to the Distributor, to apply so much of said deposit as may be necessary in satisfaction of such payment or of such claim, if the amount thereon be liquidated or determinable by computation. If such claim be not liquidated, the Producer shall have the right to withhold so much of such deposit as in its discretion it may deem necessary to fully satisfy such claim, the interest thereon and all costs and expenses, legal or otherwise, connected with the establishment of such claim at law or in equity. Upon the establishment of such claim, the Distributor shall have the right forthwith to apply so much of said deposit as may be required to satisfy the same with interest, costs and expenses. In the event that the Producer applies such sum or any part thereof in satisfaction of such

demand or of such claim, the Distributor agrees to deposit a further sum with the Producer equivalent to the sum so applied.

IN WITNESS WHEREOF the parties hereto have duly executed these presents the day and year first above written.

THE "X" MOTION PICTURE CORPORATION
By.....
Assistant Treasurer.
THE "Y" IMPORTING COMPANY
By.....

APPENDIX N

FREQUENCY OF OCCURRENCE OF CLAUSES IN SPECIFIED GROUPS OF FOREIGN AGENCY CONTRACTS

CLAUSES	NON-MECHANICAL SPECIALTIES	MECHANICAL SPECIALTIES	MACHINERY AND LARGE INSTALLATIONS	AUTOMOTIVE
Grant of Agency	Always	Always	Always	Always
Territory	Always	Always	Always	Always
Duration of Contract	Always	Always	Always	Always
Selling Efforts of Agent	Always	Always	Often	Always
Competitive Lines	Always	Always	Often	Often
Service by Agent	None	Often	None	Always
Direct Sales	Often	Often	Always	Always
Indirect Sales	Often	Often	Often	None
Commissions and/or Discounts	Always	Always	Always	Always
Prices	Always	Always	Always	Always
Terms of Sale	Always	Always	Always	Always
Agent's Stocks	Seldom	Often	Often	Always
Advertising	Often	Often	Often	Often
Purchase or Sales Quotas	Seldom	Often	None	Often
Approval of Orders by Manufacturer	Always[1]	Always[1]	Always[1]	None[2]
Warranty of Products by Manufacturer	None	Seldom	Often	Always
Cancellation of Contract	Always	Always	Always	Always
Repurchase of Products by Manufacturer	None	Seldom	None	Often
Return of Products by Agent	None	None	None	Seldom
Extra-Territorial Sales	Seldom	Often	Often	Always
Initial Order from Agent	None	Seldom	Seldom	Seldom
Market Information	Often	Often	Seldom	Always
Changes of Design of Products	None	None	None	Often
Protection of Trade-Mark and Patents	None	Seldom	Seldom	Always
Assignability of Contract	Seldom	Seldom	Seldom	Always
Legal Jurisdiction Controlling Contract	Seldom	Seldom	None	Always
Modification of Contract	None	None	None	Always
Agent's Power to Obligate Manufacturer	Seldom	Seldom	Seldom	Always
Delay in Shipment Due to Unavoidable Causes	Seldom	Seldom	Often	Always
Claims for Loss and Damage	None	None	None	Always
Arbitration of Disputes	One	One	One	One
Translation of the Contract	None	None	None	Always
Waiver of Rights by Manufacturer	None	None	None	Always
Bonding the Agent	None	None	None	Seldom
Post-Contract Rights and Duties of the Parties	Seldom	Seldom	None	None

[1] This includes only those contracts which permitted the agent to take orders on a commission basis. The clause is never used where the agent buys the goods outright from the manufacturer.

[2] None of these contracts permitted the agent to take orders on a commission basis.